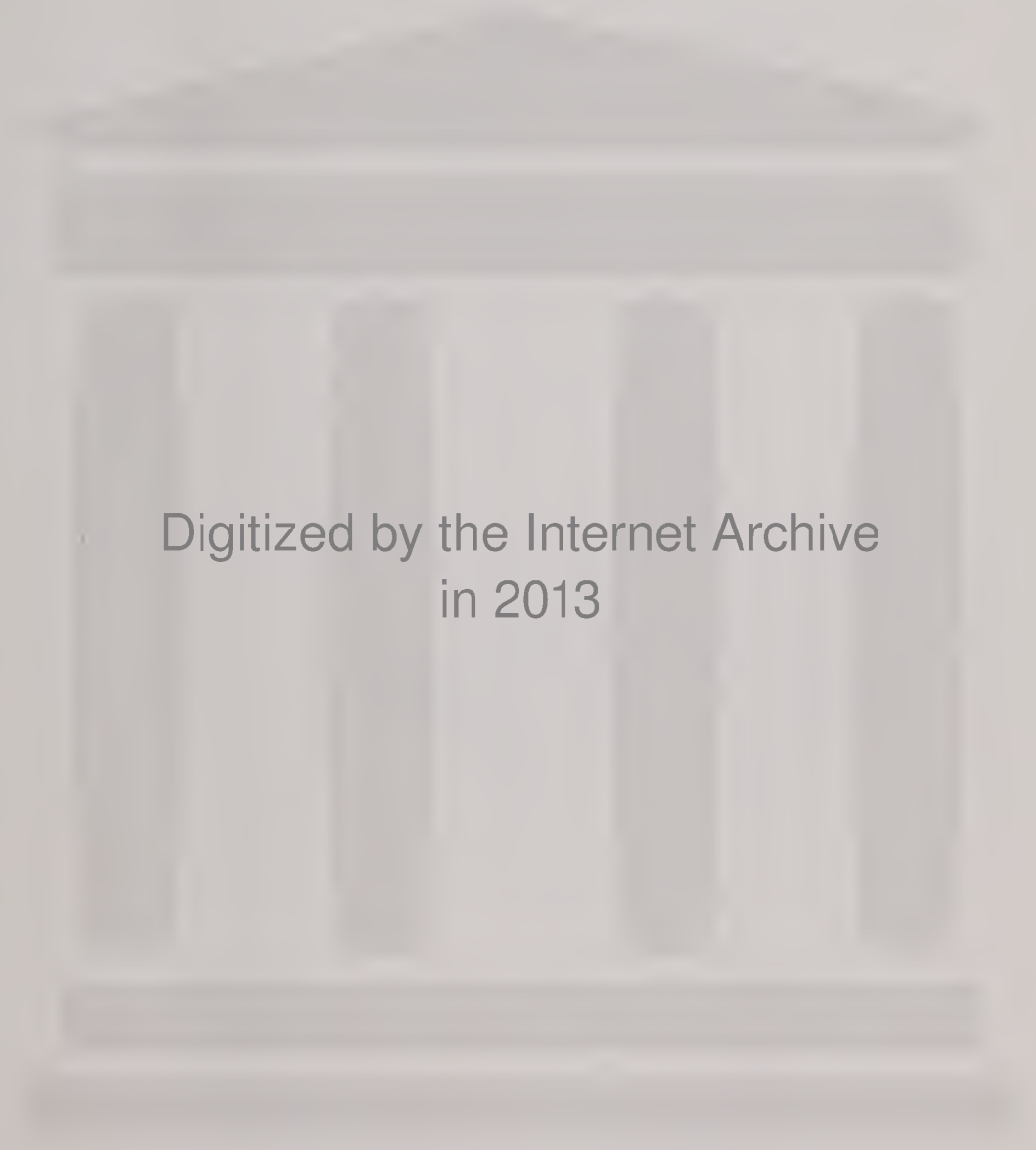
MARYLAND & RARE BOOK ROOM
UNIVERSITY OF MARYLAND LIBRARY
COLLEGE PARK, MD.

DO NOT CIRCULATE


Digitized by the Internet Archive
in 2013

http://archive.org/details/commissionmeetin07mary

CONSTITUTIONAL CONVENTION COMMISSION

COMMISSION MEETING

Maryland Suite, Holiday Inn

Baltimore, Maryland

October 15, 1966

COMMISSION MEETING

Maryland Suite, Holiday Inn

Baltimore, Maryland

October 16, 1966

VOLUME VII

Maryland
KFM
1601
1967
.A23
vol. 7
FOLIO

CONSTITUTIONAL CONVENTION COMMISSION

WILLIAM PRESTON LANE, JR.
Honorary Chairman

H. VERNON ENEY
Chairman

ROBERT J. MARTINEAU
Secretary

E. DALE ADKINS, JR.	STANFORD HOFF
HARRY BARD	MARTIN D. JENKINS
CALHOUN BOND	CLARENCE W. MILES
ELSBETH LEVY BOTHE	EDWARD T. MILLER
FRANKLIN L. BURDETTE	CHARLES MINDEL
RICHARD W. CASE	JOHN W. MITCHELL
HAL C. B. CLAGETT	E. PHILLIP SAYRE
CHARLES DELLA	ALFRED L. SCANLAN
MRS. MAURICE P. FREEDLANDER	L. MERCER SMITH
JAMES O'C. GENTRY	MELVIN J. SYKES
JOHN R. HARGROVE	FURMAN L. TEMPLETON

WILLIAM C. WALSH

* * * * * * *

JOHN C. BROOKS
Executive Director

KALMAN R. HETTLEMAN
Assistant to the Executive Director

* * * * * * * *

William Prescott Allen *(Resigned January 5, 1966)*
Ernest N. Cory, Jr. *(Resigned May 13, 1966)*
Walter R. Haile *(Resigned December 20, 1966)*
William J. McWilliams *(Resigned September 10, 1965)*
Ridgely P. Melvin, Jr. *(Resigned August 2, 1966)*
George L. Russell, Jr. *(Resigned July 12, 1966)*

* * * * * * * *

700 Mercantile Trust Building
Baltimore, Maryland 21202

A 3 WR

CONSTITUTIONAL CONVENTION COMMISSION

COMMITTEES

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

James O'C. Gentry, Chairman
(appointed Chairman on July 12, 1966)
Charles Della
Leah S. Freedlander
John R. Hargrove
(appointed on July 12, 1966)
Stanford Hoff
John W. Mitchell
(appointed on November 9, 1966)
Melvin J. Sykes
(appointed on July 12, 1966)
Lewis D. Asper, Reporter

* * * *

William Prescott Allen
(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
George L. Russell, Jr.
(served as Chairman until July 12, 1966)

COMMITTEE ON THE LEGISLATIVE DEPARTMENT

Harry Bard, Chairman
Charles Della
Edward T. Miller
Charles Mindel
Alfred L. Scanlan
John H. Michener, Reporter
(appointed on September 12, 1966)

* * * *

Martin D. Jenkins
(served until June 6, 1966)
William C. Walsh
(served until June 6, 1966)
Alexander Harvey, II
(served as Reporter until September 12, 1966)

COMMITTEE ON THE EXECUTIVE DEPARTMENT

E. Dale Adkins, Jr., Chairman
Calhoun Bond
Charles Mindel
E. Phillip Sayre
Furman L. Templeton
Garrett Power, Reporter

* * * *

Elsbeth Levy Bothe
(served until June 6, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)

COMMITTEE ON THE JUDICIARY DEPARTMENT

Robert J. Martineau, Chairman
(appointed Chairman on August 2, 1966)
Elsbeth Levy Bothe
John R. Hargrove
(appointed on July 12, 1966)
Clarence W. Miles
Melvin J. Sykes
(appointed on July 12, 1966)
Lawrence F. Rodowsky, Reporter

* * * * *

Richard W. Case
(served until June 6, 1966)
William J. McWilliams
(served as Chairman until September 10, 1965)
Ridgely P. Melvin, Jr.
(served as Chairman from September 10, 1965 to August 2, 1966)
George L. Russell, Jr.
(served until July 12, 1966)
E. Phillip Sayre
(served until June 6, 1966)
L. Mercer Smith
(served until June 6, 1966
William C. Walsh
(served until June 6, 1966)

COMMITTEE ON STATE FINANCE AND TAXATION

Richard W. Case, Chairman
Calhoun Bond
Stanford Hoff
Martin D. Jenkins
L. Mercer Smith
Stephen H. Sachs, Reporter

* * * *

Harry Bard
(served until June 6, 1966)
Charles Mindel
(served until June 6, 1966)

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

Hal C. B. Clagett, Chairman
(appointed Chairman on December 2, 1965)
Franklin L. Burdette
Leah S. Freedlander
Clarence W. Miles
(served as Chairman until December 2, 1965)
L. Mercer Smith
John B. Howard, Reporter
(appointed on May 12, 1966)

* * * *

E. Dale Adkins, Jr.
(served until June 6, 1966)
William Prescott Allen
(served until January 5, 1966)
Walter R. Haile
(served from July 12, 1966 to December 20, 1966)
William J. McWilliams
(served until September 10, 1965)
Ridgely P. Melvin, Jr.
(served until August 2, 1966)
Furman L. Templeton
(served until June 6, 1966)
John Martin Jones, Jr.
(served as Reporter until February 23, 1966)

COMMITTEE ON MISCELLANEOUS PROVISIONS

Elsbeth Levy Bothe, Chairman
Leah S. Freedlander
James O'C. Gentry
Furman L. Templeton
Lewis A. Noonberg, Reporter
(appointed February 26, 1966)

* * * *

William Prescott Allen
(served until January 5,1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
Walter R. Haile
(served from July 12, 1966 to December 20, 1966)
Edward T. Miller
(served until June 6, 1966)
Frank A. DeCosta, Jr.
(served as Reporter until February 22, 1966)

COMMITTEE ON STYLE

Franklin L. Burdette,Chairman
E. Dale Adkins, Jr.
Harry Bard
Richard W. Case
Martin D. Jenkins
Margaret Kostritsky, Reporter

* * * *

Calhoun Bond
(served until June 6, 1966)
Hal C. B. Clagett
(served until June 6, 1966)

COMMITTEE ON CONVENTION PROCEDURES

Alfred L. Scanlan, Chairman
Hal C. B. Clagett
James O'C. Gentry
Robert J. Martineau
Edward T. Miller
John W. Mitchell
(appointed on November 9, 1966)
E. Phillip Sayre
Eugene Pitrof, Reporter

* * * *

Franklin L. Burdette
(served until June 6, 1966)
Charles Della
(served until June 6, 1966)
Stanford Hoff
(served until June 6, 1966)
Clarence W. Miles
(served until June 6, 1966)
George L. Russell, Jr.
(served until June 6, 1966)

CONSTITUTIONAL CONVENTION COMMISSION

Meeting of the Constitutional Convention Commission held on Saturday, October 15, 1966, at 9 o'clock a.m., at the Maryland Suite, Holiday Inn, Baltimore, Maryland.

PRESENT:

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Dr. Harry Bard, Member
Calhoun Bond, Esquire, Member
Mrs. Elizabeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Richard W. Case, Esquire, Member
Hal C. B. Clagett, Esquire, Member
Mr. Charles Della, Member
James O'Conor Gentry, Esquire, Member
Walter R. Haile, Esquire, Member
John R. Hargrove, Esquire, Member
Stanford Hoff, Esquire, Member
John B. Howard, Esquire, Member
Dr. Martin D. Jenkins, Member
Honorable William Preston Lane, Jr., Member
Robert J. Martineau, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
John W. Mitchell, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member

Reported by:

Norris F. Swetland

ALSO PRESENT:

John C. Brooks, Esquire, Executive Director
Dr. John H. Michener, Research Assistant
Mr. Garrett Power, Reporter, Executive Committee

- - -

THE CHAIRMAN: We will now resume consideration of the Sixth Report of the Committee on Convention Procedures. There are two matters not embraced within that report which the Committee wants to bring to the attention of the Committee.

MR. SCANLAN: We hadn't considered specifically drafting proposed legislation. At various times, I think we have called to the attention of this Commission the expense involved in a special election. The estimates we got through the Attorney General's office some time ago, I think a year ago, were in the neighborhood of $750,000. But, whatever the expense, it has to be borne by somebody, either the State or allocated to the local subdivisions, I believe, on the basis of the number of votes cast in the previous election.

THE CHAIRMAN: Keep your voice up, please.

MR. SCANLAN: I believe, and I don't vouch for the accuracy of the statement if it is allocated among the subdivisions, it is allocated on the basis of the votes. But in any event, it is clear in our minds, the expense of this election, it is a State matter, one of the most fundamental State matters we have had in generations, and the costs should be borne by the taxpayers of the State as a whole and not saddled on the particular subdivisions. We would recommend that we think it appropriate to draft a bill to appropriate the monies for the conduct of the elction. I think we have to leave the figure blank.

I didn't make any provision for that. More specific estimates can come in by the time the Legislature convenes.

THE CHAIRMAN: Would you make a motion?

MR. SCANLAN: I move this Commission send on to the Legislature at least in draft form a paper that would assess or provide for the costs of the special election as recommended in our Report, and that this be a State expense.

MR. HOWARD: Second the motion.

THE CHAIRMAN: Any discussion?

Mr. Brooks?

MR. BROOKS: Would it be feasible to incorporate into the State budget an amount which could be amended if it were too low or not correct rather than put it in a supplemental appropriation bill?

MR. SCANLAN: I guess we could figure, John, recognizing it would be a guesstimate. We do have this figure roughly of $750,000. I guess we could name the figure and get it in the budget; might be a wise thing.

MR. BROOKS: That is quite a large figure for them.

MR. SCANLAN: The election will be in June of 1967, so it will be in this budget.

MR. BROOKS: That is right.

THE CHAIRMAN: When you say this budget, what do you mean, the budget now under consideration?

MR. SCANLAN: The budget that goes to the Legislature in January.

THE CHAIRMAN: That budget won't take effect

until the fiscal year beginning July 1, 1967. So it would have to be supplemental to the current budget. May I suggest if you would accept the motion in this form that the Commission recommends to the Governor and the Legislature that the entire expense of the special election be borne by the State and that the Commission request the Committee to draft appropriate legislation to carry this into effect? Is that the substance of your proposal?

MR. SCANLAN: Yes.

THE CHAIRMAN: Any discussion?

Mr. Miller?

MR. MILLER: Just a query. What about the cost of the Convention assuming that will be in the next budget?

THE CHAIRMAN: The Convention expense would be in the budget for the fiscal year beginning July 1, 1967. That is the budget that will be presented to the Legislature next January.

MR. MILLER: Should we now be submitting the program and asking for enabling legislation in the current session? Ought that not to be included at the same time?

THE CHAIRMAN: In effect, we have already done

so in that the bill considered yesterday would provide that the expense be met, and we have already requested the Governor as I indicated yesterday, to initiate the necessary steps to include it in the budget.

You ready for the question? The question arises on the motion that the Committee recommend to the Governor and to the Legislature that the entire expense of the special election for delegates to the Constitutional Convention be paid by the State and that the meeting on Convention Procedures draft appropriate legislation to carry this into effect.

All in favor, signify by saying Aye. Contrary, No. The Ayes have it.

Now, Mr. Scanlan, the Staff suggested to your Committee that it prepare Rules of Procedure for consideration of the Convention. I understand your Committee has discussed it, but is in some uncertainty about it. Can you present that matter to the Commission?

MR. SCANLAN: Yes, as the Chairman has said, it has been suggested that maybe this Commission should, among its other works, draft a proposed set of rules which

the Convention could observe after it had been organized and our Committee has examined rules of the House Representatives of the United States Congress, the rules of the House Delegates and rules of the Senate, and the rules of the Rhode Island Constitution Convention. I believe it fair to say the Committee's, some lethargy on the Committee's part stems from the fact that some of them regard this as a make work project. The other arises out of the concern that maybe if this Commission were to draft a full-fledged set of rules to give to the Convention some might feel we are usurping the functions of the Convention.

It has some advantage, of course, in having rules ready made to observe as soon as the Convention begins to operate. On the other hand, the way we drafted this bill, we will have the summer to organize, and we will follow Roberts Rules of Orders until they do organize and in that summer, perhaps they can work out different rules if they don't prefer to follow Roberts Rules of Orders.

In any event, the Commission is concerned

whether this Commission wishes it to proceed in drafting a proposed set of rules which this Commission would approve and recommend to the Convention when it convenes.

THE CHAIRMAN: Mr. Della?

MR. DELLA: Mr. Chairman, I have a very strong opinion that something should be used as a guide. I have been to many conventions. I know every convention I have attended they have always had a set of rules to work from. The Rules Committee can make any changes they want, but it saves an awful lot of time because the Convention can't get going until you have the rules to work by. You can have a lot of people unfamiliar with these things, and it creates an awful lot of discussion. If they have something to work with, a guide, it doesn't take too long. I think we should work up a set of rules.

MR. SCANLAN: We have provided in the bill, in the draft bill that Roberts Rules of Orders be observed until the Convention adopts its own rules, so they wouldn't be operating --

MR. DELLA: But you need more than that. How many times a person should speak, how long they should

speak, and rules of operations and things of that sort that have to be taken under consideration. It seems to me that it would be to the advantage of the Convention itself if they have somebody that has something in their hand and from there to let the Committee make whatever changes they want.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I disagree a little bit about the procedure because if we draw up a set of rules and the Committee adopts them, presumably if they are a new set of rules even though there are many things in them that are in other rules of order, the Committee, the Convention will start without precedent and the parliamentarian will have to construe every phrase. I think we would be in a better position if we recommend to the Commission that they select some well established rules of order, and then modify them to fit the occasion, but in so doing, they would have a background of, in some cases, generations of experience as to what is relevant and what isn't. The parliamentarian would have, not have to make a complete research on every point that may develop. Personally, I

think the two major parties have learned their lesson, and I hold no brief for it because I am familiar with it, but for instance, the Rules of the House of Representatives are so well established by precedent and everything else, and I assume the same thing might be true of the Rules of the Maryland Senate or any long-continuing body. But I would recommend that we start out with something that has precedent behind it.

THE CHAIRMAN: Mr. Miller's statement, I think, points up a very substantial part of the problem, and I would like to state to the Commission the position of the Staff on this matter and the reason we requested the Committee to draft a set of rules. The 1867 Convention, as you know, convened and in an hour elected the President and then spent three days debating what kind of rules they should adopt. Nothing else was done except that. We realize, of course, that there would be some who would say if this Commission presented a draft of rules that the Commission is trying to take over all the functions of the Convention and merely make it a rubber stamp. We don't think that charge can be leveled any more at the

idea of preparing the results than it can at preparing a draft of the Constitution or the commentaries or the research papers or anything else we will present. We hope, as indicated in the discussion of the bill yesterday, that the Convention would convene in the early part of the summer for the purpose of electing the presiding officer and have him appoint committees and to enable the Members to begin their study of whatever materials they want to study, including, of course, the work of this Commission.

It would be most helpful, we think, if the officers, principal officers of the Convention, such as the parliamentarian could be appointed at that time and the Rules Committee could be appointed so that they could consider a draft of rules already presented and be able to move forward quickly. There are some slight disadvantages to preparing a draft, but we think the advantages far outweigh the disadvantages.

Let me add just one more comment. This is in no sense a make work project. We are on the reverse pedal on that now. Anything we don't have to do, we are not

going to undertake to do.

MR. BROOKS: One further word about the usefulness of some rules. The one recommendation we received above all others from both the Rhode Island and Michigan people involved in a convention was that we could seriously consider preparing some recommended rules that the Convention might use as a base. Because this wasn't done in Rhode Island, the Rhode Island convention is practically bogged down. It is still in session. There is no hope of their ever coming up with a product, and it is a matter of months before it dies completely. In Michigan, they had a great deal of difficulty. They were never really satisfied with their rules, and it was some of the recommendations of alterations in their rules that prompted Rhode Island to adopt basically the Michigan rules with a few changes that didn't prove to add anything and hindered the concept of operations even more.

But in light of the recommendation yesterday that the Convention keep a record of its transactions which is also a proposition that was originally desirable in Michigan and Rhode Island, the fact that the Convention

can as well as not decide to meet in executive session and in which case not keep its record, and then just meet in regular open public session whenever it desires to for five or ten minutes and ratify everything that is done in five minutes' time that it may have done in executive session over a period of months somewhat defeats the whole idea of having any record at all, and this is one of the problems that developed in Rhode Island that ought to be considered and some recommendation made on, in the nature of rules that really aren't sufficiently covered by Roberts Rules of Order or in fact, by the Rules of the House and Senate of the State Legislature.

It ought to be thought out in advance insofar as what is desirable and some recommendations prepared because of the peculiarities of the Convention are such that there should be some distinction between their rules and organization from what normally exists for just the State Legislature or some other legislative body that one might find some procedures used by such groups.

THE CHAIRMAN: Any further discussion?

Governor?

GOVERNOR LANE: Basically, we are recommending to the Convention what we hope they will do. I can't see any objection to always including a suggestion that would speed up their work.

THE CHAIRMAN: We have no motion. Will somebody make a motion? I am sorry, Mr. Sayre.

MR. SAYRE: I was just going to move that the Committee on Convention Procedures be requested to prepare a set of rules for the Convention.

JUDGE ADKINS: Second.

THE CHAIRMAN: The motion is that the Committee on Convention Procedures be requested to prepare a draft of rules of procedure for the Convention. Is there any further discussion?

Mr. Scanlan?

MR. SCANLAN: I have nothing.

THE CHAIRMAN: Ready for the question? All those in favor, signify by saying Aye. Contrary, No. The Ayes have it, and it is so ordered.

Do you have anything further, Mr. Scanlan?

MR. SCANLAN: No, Mr. Chairman.

THE CHAIRMAN: That concludes the consideration of the Sixth Report of the Committee on Convention Procedures. We will now proceed to a consideration of the Fifth Report of the Committee on Miscellaneous Provisions.

MR. BROOKS: Is there anyone that doesn't have a copy of the Report?

THE CHAIRMAN: This is the Report dated October 14, 1966.

Mrs. Bothe?

MRS. BOTHE: Mr. Chairman, the Fifth Report of the Committee on Miscellaneous Provisions deals with the education provisions of the Constitution. The Fourth Report of the Committee which was submitted at the July meeting in Easton also gave recommendations regarding education. There was some discussion at the July meeting which resulted in agreement of the Commission with the Committee on certain matters of principle, but no definitive action was taken. Since that time, the Committee has considerably reviewed the material and thinking contained in the Fourth Report and has completely revised that Report although there has been no substantial change in the

position taken by the Committee at the July meeting, and in that Report.

I might say there is one change or one deletion that was made by the Committee as a result of action taken by the Commission at the July meeting. We originally had recommended that there be a section of the education article prohibiting discrimination in the school system. In view of the fact that the Commission in the Declaration of Rights proposing a general prohibition, we felt that such a provision in the education article would be redundant and not necessary, so that we have not put forward that recommendation at this time.

Otherwise, the substance of our Report or the substantial recommendations in our Report are the same, although the reasoning is somewhat different. The existing education provisions of the Constitution are reproduced in the Report on Page 2. They consist of Article VIII of the Constitution which is devoted entirely to the subject of education in three sections and Article 43 of the Declaration of Rights which is a general exhortation to encourage the diffusion of knowledge and virtue, et

cetera. The Declaration of Rights Committee determined not to put a provision of this nature in the proposed Declaration of Rights, and we have dealt with it in the general education article. The Committee, of course, had first to consider whether it was necessary to include an education article in the Constitution. We had no difficulty in making that determination. Most State Constitutions do contain provisions relating to education, and it seemed to us that in the years since the 1867 Constitution had been formulated that education had become increasingly important.

I believe that the discussion at the July meeting constituted a mandate to this Commission that there should be an education article in the Constitution so that no action on that general subject need be taken by the meeting today. Now, as to what that education section should contain, and we make no recommendation as to whether it should be a separate article or whether the section or the provisions on education would be incorporated in some other part of the Constitution, as to what it should contain the Committee has studied a great deal

of literature, has had many contacts with the administrative and teaching personnel in the State School System. We know the hearing last March at which some twenty different persons appeared that representatives of the educational institutions and of the general public to give us suggestions as to what they felt should be and shouldn't be in the education article -- and after surveying the situation certain issues developed which we felt were the vital ones we had to deal with. Now, starting on Page 4 and going on to Page 5 of the Report are listed what we found to be the basic issues as presented to us. We considered these for inclusion in an education article for the new Constitution.

The first of them dealt with Section 3 of Article VIII. That is a statement -- oh, I might say in addition to the provisions on Page 2, there were also the very significant provisions contained in Article III, Section 52, which the Commission acted on yesterday on the recommendation of the Committee on Finance and Taxation, and the recommendation adopted by the Commission was that which our Committee felt should have been continued

as the other provisions in the new Constitution regarding education. Now, there was considerable sentiment expressed that the, that not only should the budget provisions be retained but that the substance of Section 3 of Article VIII that the school fund be inviolate should also be retained in the new Constitution. Then there was sentiment expressed regarding the State Board of Education and the State Superintendent of Public Schools. There is no mention whatever made of them in the current Constitution, and there was some feeling that they should be recognized, and their means of selection placed in the Constitution.

Third was that the University of Maryland and its Board of Regents be given constitutional recognition, and of course, that will be gone into with some debate, I think, this morning. It was also suggested, and I might say that the question of autonomy for the other institutions of higher learning of the State was not dealt with as comprehensively as it should have been in our earlier Report. Since July, we have had considerable occasion to review the situation with regard to the Government and higher

educational facilities in the State, particularly as regards the State Board of Colleges and have come up with a recommendation in this Report. On the Commission's meeting in July, Dr. Jenkins and Dr. Bard both made recommendations regarding recognition of the autonomy for other institutions of higher learning in the State, and we have also dealt with those in our Report. There was a suggestion made principally by Dr. Cohen that the Constitution should provide that all qualified residents of the State be entitled to a higher education without regard to their ability to pay, and there was a converse concern expressed at the July meeting that the Committee should frame its recommendations in such a way as to be certain that the State was not obligated to supply higher education to everyone regardless. We think we have also taken care of that situation. Then, the question arose of the Maryland practice of granting aid to private institutions and whether that should be given constitutional sanction. Our Report deals also with that question. Now, as to the resolution of these various resolutions I have outlined, would it be agreeable if we go through the

resolutions and take various action if necessary?

THE CHAIRMAN: You mean independent of those embodied in the draft you suggested?

MRS. BOTHE: Yes, the draft is fashioned for what it leaves out as what it contains.

MR. SCANLAN: Why don't you go through the Sections and if you left something out that should be in, it can be raised by motion? This way you debate issues, and it might be academic.

THE CHAIRMAN: Let us proceed with the consideration of the Sections, and if any of the omitted matters are not covered in the debate, you can decide then whether you want a specific approval or disapproval.

MRS. BOTHE: I trust everyone has carefully read the voluminous report distributed.

The Committee proposes that there be either an Article or various Sections devoted to education in the new Constitution and breaks down the recommendation into three sections.

MR. DELLA: What page are you on?

MRS. BOTHE: Page 2, they are all reproduced

together and starting on Page 15, they are reproduced again with the commentary. Proposed Section 1. It says, The State shall encourage the advancement of knowledge; wherefore, the General Assembly shall appropriate funds for a system of public education at all levels as it deems desirable, to foster, enhance and promote the intellectual, cultural and occupational development of the people.

This proposed Section, one to which a sample was made and attached by Mrs. Freedlander, would incorporate the sentiment and admittedly it is a sentiment expressed now in Article 43 of the Declaration of Rights and also would be a nudge to the General Assembly to support all manner of education in the State to the extent possible. It is a recognition of thetremendous expansion of education, public education, since the 1867 Constitution which planned and thought and gave the concept of the grade school. We had not recommended that community colleges, kindergartens, adult education or any particular phase of higher or lower education other than the University of Maryland which comes next be recognized as such in the Constitution. We feel that the facilities which the State

is affording are constantly changing and expanding and that while there should be recognition of the State's support of education outside of the standard grade school and elementary school level, that it should be done through a general exhortation such as we have placed in Section 1.

We have made a separate section out of the exhortation for the reason that we want to separate the concept of encouragement of education from that of mandatory education which is what we place in Section 2. We feel that this statement takes care of some of the commentary made at the July meeting that there might be some danger if the elementary school mandate were mixed with the balance of the educational program and offered publicly there might be a danger of someone complaining education at any level as a matter of right.

This does away with that problem and implies it in the recommendation as a rejection, happily of the right to education beyond the elementary school level at State expense.

THE CHAIRMAN: Mrs. Freedlander, since your dissent relates to Section 1, do you want to comment first?

MRS. FREEDLANDER: Yes. As Mrs. Bothe said, we had discussed this at great length, and this Section 1 is a new Section which was added after our last meeting. As I have stated in the commentary, I do not feel that there is a need for this Section because Section 2 says all the things that Section 1, that we believe in without the necessity. It is mandatory that there be a system of free public schools, and it provides for such other public educational institutions such as kindergartens, adult education programs, and community colleges. That phrase, other educational institutions takes care of the other institutions. Now, the words may seem picayune in my commentary, but I don't see the necessity for using such words as wherever, to foster, enhance and promote. I like the simple words. I like the conciseness of our original Article, and I feel it has more meaning and is something that can be enforced.

THE CHAIRMAN: The original Article to which you refer is reproduced in this Report.

MRS. FREEDLANDER: Yes, what is Section 2 of the majority Report is, I would like to see be Section 1.

THE CHAIRMAN: And that is on Page 1 of your dissent?

MRS. FREEDLANDER: Yes, and also on Page 15 of the majority Report, Section 2. Section 2 of the majority Report.

THE CHAIRMAN: The Section 1 that you propose is not identical with Section 2 of the majority Report.

MRS. FREEDLANDER: Yes, I believe it is.

MR. BROOKS: Section 2 is incorporated in Section 1.

MR. SCANLAN: Say that again.

THE CHAIRMAN: Section 1 as Mrs. Freedlander advocates it, includes everything that is in Section 2, but includes more also. It is on Page 1 of her dissent.

MRS. FREEDLANDER: It is the original Report we made.

THE CHAIRMAN: Any question or comment?

Mr. Clagett?

MR. CLAGETT: Then, do I understand correctly that the second portion of your recommended Section 1 as appears on the first page of your dissent would include

the recommended Section 1?

MRS. FREEDLANDER: Yes, without the exhortation. Some change of words in it.

THE CHAIRMAN: Dr. Bard?

DR. BARD: Mr. Chairman, is it in order to comment not on the substitution of one section for another, but on the contents or let us say, the deletions, as I see it, in terms of both proposals, or is this out of order?

THE CHAIRMAN: No, no.

DR. BARD: Well, I would like to start the discussion by a question. I was present when there was a good deal of discussion in connection with Section 3 of Article VIII in the current Constitution, school fund of the State shall be kept inviolate and appropriated only to the purposes of education. Dr. Polin and a whole host of people involved in education in the State of Maryland and in the Counties of Maryland made it clear that this particular section was the one that made it possible for them to be able to depend upon the budget for their respective County school systems and the State school system.

THE CHAIRMAN: Dr. Bard, may I interrupt a moment? You were not here yesterday. At the time we considered the Second Report of the Committee on Finance, I think that the emphasis of the people to whom we have just referred and the protection of the financial matters dealing with education was more with respect to the budgetary provisions in Section 52. The Second Report of the Committee on Finance presented yesterday and approved provides for that kind of financial protection.

DR. BARD: Then I withdraw the comment.

THE CHAIRMAN: Any further question regarding Section 1?

Mr. Miller?

MR. MILLER: I suppose it is standard, but it seems to me -- but what is school age for a child?

MRS. BOTHE: I would like to mention that because a number of State Constitutions specify between 6 and 16 or 16. We deliberately phrased the word the way we did because the concept is a changing one, going both down and up. Kindergartens will probably be available to all children within the foreseeable future, and it

is very likely through junior college years a free education will be available. The use of the words, school age, is to connote whatever the current meaning of it may be, and we feel by using it, there will be no need for constitutional amendment on the subject at any time.

MR. MILLER: The only thought I have in that connection is the word, children. In this day when so many young men are drafted to go to war and come back, they may be in their twenties or twenty-one, and they are not children, but they should have the, they are of school age in view of that kind of situation. I don't like the word, children.

THE CHAIRMAN: Mr. Della?

MR. DELLA: I think it is wise to leave the school age out of the phrase as such, because some educators are of the opinion now that children should start to school at the age of two and three years of age because the earlier they can get them started, the easier they can start molding their minds. As was pointed out, times are developing now with automation and technological developments that most people will be going to school for

the rest of their life and due to circumstances, most of these things can be governed by laws of the Legislature.

THE CHAIRMAN: Let me request we not discuss the school age question any more.

Mr. Clagett?

MR. CLAGETT: I can't skip the impression, and I would like to have it clarified, Mrs. Freedlander, whether the gist of your dissent here wouldn't be a matter for consideration by the Committee on Style?

MRS. FREEDLANDER: No.

THE CHAIRMAN: I would answer it goes beyond the mere matter of style. I think the type of change recommended by Mrs. Freedlander is greater than the Committee on Style would feel free to attempt.

MR. CLAGETT: Then I would ask Mrs. Bothe if she hasn't refused the principle that the Commission is trying to follow, short, concise, direct expression.

MRS. BOTHE: Perhaps we have, but then I think if we are going to have an education article at all that we are going to have to allow for some latitude in this area because other than Section 2 which is a mandatory

provision everything pertaining to education is in the way of an exhortation. Now, we have had in the Declaration of Rights a statement in Section 43. We felt that it was important that the State of Maryland symbolically recognize its obligations to support education on a broad front and that there was no other way to do it but through an exhortatory passage such as the one here. We feel it will have some explicit effect because it will be possible in the Legislature for people to point to the language of Section 1 and say that the Constitution demands that the Legislature and the General Assembly extend itself in support of education insofar as the times warrant and the budget warrants.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I think the debate is whether we exhort in one section or exhort in two sections and on that issue of this, Mrs. Freedlander has the advantage of both terseness and lucidity.

MRS. BOTHE: I think perhaps we will have to discuss Sections 1 and 2 together since Mrs. Freedlander's dissent does go to the question of whether they should be

placed in one paragraph.

THE CHAIRMAN: Well, let's confine, we haven't a motion right now, let's confine the discussion for the moment to Section 1.

Mrs. Freedlander?

MRS. FREEDLANDER: Mr. Chairman, I would like to state that Maryland has a very good reputation for encouraging education. In writing a Constitution in 1966 for the next fifty years, I don't think it is wise or proper for us to be exhorting the State for doing what it has been doing and doing admirably. If we were Alaska or Hawaii, where we were just getting started on the Constitution, perhaps an exhortation would be in order. I don't think it is in order in the State of Maryland, rather giving the Constitution, showing the Legislature that they must provide is more in order. I would like to move as amendment or substitute motion, what would it be?

THE CHAIRMAN: Just a motion right now.

MRS. FREEDLANDER: That the Commission adopt Section 1 as presented in the dissenting Report.

DR. BARD: I second.

THE CHAIRMAN: Now we will hold that motion in abeyance until we have considered Section 2, discuss Section 2.

Mrs. Bothe?

MRS. BOTHE: Proposed Section 2 would read: The General Assembly shall provide for a statewide system of free public schools sufficient for the education of, and open to, all children of school age.

This carries out what is now contained in Section 1 of Article VIII. We feel without any doubt that there should be a constitutional mandate requiring the General Assembly to provide for a free education to all children of school age and under the terms we use, they are terms of art in a sense, but we don't feel that they are litigation breeders in any way, because the concept of free public schools implies it has been accepted as meaning the elementary school system or secondary school system, I think is the correct word. We felt that the Section should be segregated from the intent of the section, as expressed in Section 1 because it is a different concept. The one merely encourages the State to provide

educational facilities on whatever terms it can to as many people as possible while Section 2 commands the existence of a Statewide secondary school system open to all.

THE CHAIRMAN: Any questions?

Mr. Miller?

MR. MILLER: I would just like to hark back to the question of children. Would your theory be that a returned veteran of twenty-five who wanted to finish high school would not per se have a right to go to public school?

MRS. BOTHE: I don't believe, Congressman, that he would have. I would hope he would be able to, but --

MR. MILLER: If he wasn't a veteran; he probably is a veteran, he might have GI education, but suppose somebody for some reason or other is twenty-five years old, but they want to finish high school.

MRS. BOTHE: He can finish high school hopefully at State expense. He is not the person who is covered under Section 2. Now, it may be that in the next

100 years, mandatory education will extend from sixteen to twenty-five, it is not inconceivable, and everyone will have to go to school to that point, then he would be eligible and probably be a schoolboy as well.

MR. MILLER: You know our colleges and universities have been filled with people from seventeen to twenty-seven because of the distorted lives that our young people are living. Do we as a State want to guarantee a high school education to anybody that is reasonably willing to do it or not? That is all I am trying to find out.

MR. SCANLAN: We have not conceived that this Section 2 would guarantee a high school education to everyone if he was unfortunate enough to pass standard school age without having achieved it.

MR. MILLER: What is the standard school age?

MRS. BOTHE: Right now, I think sixteen is the limit of compulsory education and high school is the limit of free education. But this may change, up or down. It is conceivable that free education will be universally open through the community college age in the

foreseeable future, and it is also foreseeable that it will be open to nursery school on the other end of the spectrum. However, we wanted to leave the concept open so that the secondary school system could be flexible.

MR. MILLER: You don't mention secondary schools.

MRS. BOTHE: Public schools are recognized as being secondary schools in constitutional language.

MR. MILLER: I don't think they are frozen at that, are they?

MRS. BOTHE: They are not frozen, but after doing some research into the area particularly in the old Constitution, the Committee felt that this Section would pertain to the secondary school system of the State.

THE CHAIRMAN: You mean would include?

MRS. BOTHE: Yes, uniform, free Statewide education to those coming within the laws.

MR. MILLER: Do you think it would cripple your Section 2 if you left the word, children, out?

THE CHAIRMAN: And substitute what, person?

MR. MILLER: No, just all of school age.

MRS. BOTHE: I think we would have to refer to

something because maybe people would send their dogs and cats.

MR. MILLER: All persons or citizens or residents.

MRS. BOTHE: We like the word, children, because education is basically directed toward youth and childhood, and the importance of this Section is that they offer an opportunity for everyone to achieve an education during his youth.

MR. MILLER: The thing that occurs to me is that if a twenty-year old boy, had every reason he wanted to go to the local high school for some reason or other, might under this be told, You are not a child: You are too old to be a child. That is the only concern I have that it might be negating the right of an older person to go to a free school.

THE CHAIRMAN: Mr. Mindel?

MR. MINDEL: Congressman, I think you are a little confused. I think you have in mind, we have in mind a compulsory school age, but there are many, many students of twenty, twenty-one and twenty-two who are still

in high school. There is nothing to prevent their going to high school. I think we ought to straighten out what we mean by school age. When we talk of a compulsory age, that is one thing but many, many students are beyond the compulsory age. There is nothing I know of that would prevent a veteran returning from war to go back to high school at twenty-one, twenty-two or twenty-three.

MR. MILLER: We don't say anything about compulsory education here. We say what the State is to supply.

THE CHAIRMAN: I take it this Article does not deal with the subject of compulsory education?

Mr. Gentry?

MR. GENTRY: I would like to speak in favor of the Committee draft in opposition to the motion. You've got to look, I think, at the Sections 1 and 2.

THE CHAIRMAN: We are not debating the motion yet.

MRS. FREEDLANDER: Just to reassure Congressman Miller, the election code which is Article 77, makes numerous provisions for people who are overage, so to

speak, through vocational programs and programs for the handicapped and Federal aid, and that kind of thing, so that people are taken care of in Maryland under a variety of programs.

MR. MILLER: Under the statutes. We are writing the new Constitution. That is the point.

THE CHAIRMAN: I take it the position of the Committee and Mrs. Bothe is that the Constitution should require the Legislature to maintain a system of free public schools for persons of school age but does not require an adult education program. It does not prohibit an adult education program. Any further questions? Comment?

Mr. Clagett?

MR. CLAGETT: This may be a little late because it really applies to Section 1, but I would like to ask Mrs. Bothe why the word, people, is used at the end of that Section instead of citizens of this State.

MRS. BOTHE: That term was chosen in reference to citizens of this State for the reason that we felt that people encompassed everything that the State could offer,

not only to the citizens of the State but to those who come within the purview of the educational system. We live in a flexible society, and we felt that the General Assembly should provide educational facilities which would be a good credit to the State and a good part of the nation and not merely being there for the practical use of those who were citizens. I think you run into some -- I don't like, myself, the use of the word, citizens of the State, because it implies that the State has extra-territorial interest. I like the word, people, because it primarily includes those who are residents of the area and those who are employed here and doesn't preclude an interest in the rest of the world, and I think in education this is important.

THE CHAIRMAN: Do not the education laws apply to aliens as well as to citizens? The present education laws, compulsory education and all the rest?

MRS. BOTHE: And if we use the word, citizens of the State, it would imply the Constitution gives no recognition to them.

MR. DELLA: You would have to change the

educational laws of the State to comply with people.

MR. MILLER: You are talking about residents.

MRS. BOTHE: There again you get into a legalistic idea because some people are residents because they live here or work here six months and some children, of course, are hither and yon with the Armed Forces and people seems to us to be a muchbetter way to express the intention.

THE CHAIRMAN: Dr. Bard?

DR. BARD: I don't want to go back to Congressman Miller's point, but I think it was much more important than seemed evident at the moment, and I would like to move --

THE CHAIRMAN: Hold your motion. We have a motion.

DR. BARD: Good. Then I would like to say that the word, children, is an important term because should the moment come that all of your talking about, namely when all of school age is to be interpreted as moving up, let us say, into the community college level for which there is no provision in here other than within that frame of

reference, we would run into difficulty merely because the word, children, had been used here, and there would be many who would say the Constitution does not provide for this. I have another statutory possibility. I see no reason why we can't say, all of the school age, no matter which particular form we adopt, whether it be Mrs. Freedlander's or the Committee's proposal. So I am suggesting and perhaps a motion is in order later on that this matter of children is not a perfunctory term. Those of us who work with young adults know that it comes up over and over again when we get before legislative bodies in respect to whether the Constitution did have this sort of thing in mind. I would propose the deletion of that word.

THE CHAIRMAN: Mr. Bond?

MR. BOND: I would like to ask the mover of the motion if she would accept the substitution of the word, people, for the word, citizens, in the next to last line.

THE CHAIRMAN: Let's get that as a separate motion, if you don't mind.

MR. SCANLAN: I believe Mrs. Freedlander does have, citizens of the State.

THE CHAIRMAN: I am sorry. I thought you were talking about the same point as Dr. Bard. Any further questions as to Section 2?

MRS. BOTHE: I would like to make a brief comment on Dr. Bard's remark. If the word, children, were struck, school age being the wide open term that it is, it would be conceivable that anyone could say that I am school age. We are all school age in this room if there isn't some qualification, I think many of us are taking courses in schools and consider ourselves susceptible to public education.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: A relatively minor point, but in Section 2, it seems to me the responsibility sought to be imposed in that Section should be imposed on the State and not the General Assembly. It is not the responsibility of the General Assembly. It is the responsibility of the State of Maryland acting through the Governor and the General Assembly. I would suggest the

words, General Assembly, be stricken.

THE CHAIRMAN: The suggestion is that Section 2 be changed by substituting the words, State, instead of, General Assembly.

MRS. BOTHE: We did consider that; however, we thought the General Assembly language was stronger because it commanded the General Assembly to appropriate funds. Where we use the word, State, in proposed Section 1 because in that instance nobody is being told that they have to do anything, but we deliberately use the General Assembly in Section 2 because it left no doubt that at each session there would have to be funds made available for the maintenance of the free public school system.

THE CHAIRMAN: Any further question? I will come back to you, Judge Adkins, if you want to make a motion.

MR. SAYRE: There seemed to be a question on the use of, children. The Civil Service, Social Security and Veterans Administration all use the word, children, between eighteen, twenty-one, twenty-two, or eighteen, twenty-

three. I think there is enough precedence for that term where it should not pose any problem.

THE CHAIRMAN: Any further question?

MR. CLAGETT: I have some question in my mind whether it is really advisable to provide for twenty-five year olds being mixed up with twelve and fifteen-year olds.

THE CHAIRMAN: May I suggest there is going to be a motion, and we hold the discussion until the motion? Any other questions on this Section. We will consider the motion of Mrs. Freedlander.

Mr. Bond suggested that you might substitute for the word, citizens, the word, people.

JUDGE ADKINS: I would like to offer an amendment that the words, General Assembly, be stricken and the word, State, inserted. I would propose it as an alternate.

MRS. FREEDLANDER: I do not accept.

THE CHAIRMAN: In order to move more briskly, would you be agreeable we have that as a separate motion?

JUDGE ADKINS: Yes.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I don't suggest proper parliamentary

procedure, but it seems to me that Judge Adkins' motion is to amend the pending motion.

THE CHAIRMAN: He is entirely in order, but I suggested we make better time if we do it in a different way. Split it as a separate motion after we act on this.

Mr. Della?

MR. DELLA: Mr. Chairman, I am a little concerned about changing the word, citizen.

THE CHAIRMAN: You can debate that on the motion. The mover has made the change at the moment. Any further comment as to the motion? The motion now before us is a motion to eliminate Section 1 and to amend Section 2 by adding to Section 2 as it appears on Page 15, the phrase, and shall also provide for such other public educational institutions as may be desirable for the intellectual, cultural and occupational development of the people of this State. Any discussion?

Mr. Gentry?

Just a moment. Mrs. Freedlander, as the mover, you have the opportunity to open the debate.

MRS. FREEDLANDER: No, sir.

MRS. BOTHE: Do I understand that the amendment was merely, people, period; or people of the State?

MRS. FREEDLANDER: People of the State.

THE CHAIRMAN: People of the State.

Mr. Gentry?

MR. GENTRY: I speak in favor of the Committee's draft. I think it is necessary to consider Section 1 and 2 together in looking at the Committee's draft and realize what the purpose of the, of these two together are. Certainly, if you look back at the old Article VIII, which started out, The General Assembly at its first session after the adoption of this Constitution, shall set up a system of education. It would be inappropriate now that we have this long standing system to use such language as that. However, we felt that education was a matter of such importance, perhaps the most important governmental function, certainly the most important when it comes to spending, that inasmuch as education does occupy this position, we felt it was worthy of some general language although it departs from the terseness

and conciseness and what have you. We felt by stating first the general overall outlook in Section 1 and then moving into the specific operation in Section 2 that we were recognizing education, giving direction to the State to the General Assembly as to what the overall purpose is, what the constitutional mandate would be in general terms. We would want to set up a system that would develop the intellectual and cultural aspects of the people generally and move to the specifics that they should have a State system of free public education for children of school age. In this fashion by moving to the, from the general into the specific, we felt that certainly it accomplished the overall purpose which is not in the draft which is offered in substitution, because there you do just the reverse. You move from the specific, the operation of the free public school system into the general, the further operation of the other education for purposes other than the school children. I feel that having worked on it for many, many weeks and looked at several drafts, that the draft which is now offered by the Committee is by far the best.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: Recalling the eloquence of Mr. Case at one point when we were dealing with the Declaration of Rights and we had the alignment of Mr. Gentry and Mr. Case, it would be most interesting to see how Mr. Case votes as a comparison here, because there is the flavor in Sections 1 and 2 of something which he was exhorting upon us back there at the time of the Declaration of Rights.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: The question that I would like clarified by the Committee -- when we talk about a system that doesn't preclude plural, does it? We could have two systems and so forth? Then, I am asking you, Leah, on this part where you say, shall also provide for other public institutions, that is almost as if you have taken it out of the system.

MRS. FREEDLANDER: The first part is free public systems, elementary and secondary schools. The second part provides for adult education, anything that would apply to other than children of school age as we

know it under the existing Code.

MR. SAYRE: If we made a correction and said, persons, plural, or something, and your problem there is, you have something that is not necessarily free, or tax supported, is that it?

MRS. FREEDLANDER: As I said in the commentary, it could be partly State supported and partly by people, but it is not free public school.

MR. SAYRE: So that is the distinction.

MRS. FREEDLANDER: The distinction is free public education in the first Section referring to what we commonly think of as the public school, and any other institutions that the State may wish to devise that we may not think of at this time, it gives them a broad grant to do whatever else they want.

MR. SAYRE: Outside of being totally free. That is the distinction. That is all we are talking about, isn't it?

THE CHAIRMAN: Don't get back to the question. Make your point, and we will move on.

MR. SAYRE: If that is the one point, perhaps

that could be better clarified. That is all I am saying.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: It might be illuminating to debate this. I said despite the illuminating debate, this comes down to the question of whether you state something in one paragraph or two paragraphs.

THE CHAIRMAN: Mrs. Bothe?

MRS. BOTHE: I would like to re-emphazise something Mr. Gentry just said, and that is that in the proposed substitution, the other educational operations of the State are placed on the secondary basis. Dr. Bard asked me did the Committee specifically mention the community colleges. We declined to do this, because we did not want to stigmatize particular forms of other education which we hope the State will expand and continue to offer indefinitely, but we also did not feel that they should be an afterthought of the secondary school system. We felt that this other process which in scope may soon be greater in terms both of pupil numbers and in expenditures, exceed the secondary school system, that it was deserving of separate and distinct recognition in the

Constitution and that it should not be an appendage to the old-fashioned secondary school system.

THE CHAIRMAN: Any further discussion? Ready for the question? The question arises on the motion to delete Section 1 to amend Section2 by adding to it at the end, the clause, and shall also provide for such other public education institutions as may be desirable for the intellectual, cultural and occupational development of the people of this State. All those in favor, please signify by a show of hands. Contrary? The motion is carried, 15 to 6. Judge Adkins, I recognize you to make your motion.

JUDGE ADKINS: I say remove the words, General Assembly, be stricken; and the word, State, be inserted.

THE CHAIRMAN: May I suggest that you want to state or say the State may provide by law?

JUDGE ADKINS: I will accept that.

MR. SAYRE: I second.

JUDGE ADKINS: I have no desire to speak.

THE CHAIRMAN: Mrs. Bothe?

MRS. BOTHE: I was wondering whether the

addition of the words, by law, might not get us into the problem that we discussed at the July meeting which would be that the General Assembly might have to provide for other education as well as for the secondary schools?

THE CHAIRMAN: By law is only in the first clause.

DR. BARD: Put in a semicolon.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: That substitution reads rather poorly. The State by law shall --

THE CHAIRMAN: No, no the State shall provide by law.

MR. CLAGETT: For what?

THE CHAIRMAN: For a Statewide system.

MR. CLAGETT: You still got too many statements mixed up in there.

MR. SCANLAN: No, that distinguishes it.

MR. CLAGETT: I am not debating the necessity. I am debating what we are really trying to accomplish. Is there anything to be accomplished by the change?

THE CHAIRMAN: I will leave that to Judge Adkins

JUDGE ADKINS: Well, I think there is this to be accomplished, but I don't think this responsibility, as I said, should be imposed on the General Assembly. It is not a sole function of the Legislature. It is the responsibility of the elected officials of the State of Maryland and should not be put solely on the General Assembly. It is equally, if no more so, the responsibility of the Chief Executive.

MR. CLAGETT: We have made it his responsibility in the budget provisions, so why keep on saying so?

THE CHAIRMAN: I suppose Judge Adkins' answer would be that the Governor has a responsibility for the passage of legislation in almost the same way as the Legislature.

Mrs. Freedlander?

MRS. FREEDLANDER: Mr. Chairman, I feel that if we believe in the separation of powers, there are certain times in this Constitution where we should mention the Governor shall and certain times when we should mention the General Assembly shall, and in each instance, the General Assembly must through appropriations through the

provisions we adopted yesterday, does in fact, appropriate money and without the General Assembly, it couldn't begin at all and without the Governor it couldn't begin. So I feel it is self-evident and furthermore, we do have the precedent in the existing Constitution, it does say the General Assembly, and I think we ought to continue that.

THE CHAIRMAN: Section 1 as just deleted said the State.

Mr. Scanlan?

MR. SCANLAN: If we are going to elevate here the right of education to a Constitution right, it should be a right that holds in the State as a whole and not just any particular branch of the Government. On that grounds, I support Judge Adkins' motion.

MRS. BOTHE: I see at least one Member of the Committee won't go along with me, but since her substituted amendment has been adopted, I would feel that the State is the better term.

THE CHAIRMAN: Dr. Burdette?

DR. BURDETTE: I would like to suggest that the word, State, has additional advantages. I rather

feel there is an implication if the General Assembly had the responsibility for the language of the Constitution, you might also consider that the Governor and other State agencies conceivably even educationally, had only an advisory right in the matter as passed by the General Assembly, and it is a Statewide problem.

THE CHAIRMAN: Any further discussion? Ready for the question? The question arises on the motion to further amend Section 2 as just amended by striking the words, General Assembly, and substituting the word, State, and after the word, provide, inserting the wrods, by law, so that the first clause would read, The State shall provide by law for a Statewide system of free public schools sufficient for the education of and open to all children of school age.

Mr. Burdette?

DR. BURDETTE: Did the mover include the words, by law?

THE CHAIRMAN: Yes.

DR. BURDETTE: It struck me as odd. I won't belabor it.

THE CHAIRMAN: Any further discussion? All those in favor, signify by a show of hands. Contrary? The motion is carried, 20 to 1.

Dr. Bard?

DR. BARD: I would like to move that we delete the word, children, in the proposal.

MR. MILLER: I would second that, and the Doctor has worded my thoughts much better than I have.

THE CHAIRMAN: Any statement in support, Dr. Bard?

DR. BARD: Yes. I think that the word, children, creates a good deal of confusion when educators appear before legislative bodies or at the time of any hearings, particularly as they deal with areas, the so-called gray areas that lie within the high school and beyond, because here is where they get trapped, and they get into difficulty and furthermore, the strength of the proposal that we have just adopted, and I think it is an excellent one, and it is broad in scope and not limited in terms of time. I think the word, child, can be very limiting.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I have already expressed my views but I would like to say to my good friend, Mr. MacDowell, I am all in favor of words of art, but to me the word, child, no matter what they may consider it in some of the Federal statutes, I think the average citizen child is going to stop somewhere between twenty-one, and I would hope that we could have public school education for those older than that if there is a good reason for it.

THE CHAIRMAN: Dr. Michener?

DR. MICHENER: It is pointed out in Federal statutes as Congressman Miller states, child is getting a broader and broader meaning. Under the Social Security Act we talk about adult children, and this could be a child of seventy, because they are children of some people.

THE CHAIRMAN: Mr. Bond?

MR. BOND: I would like to comment that I disagree on the basic philosophy that this be mandatory to provide education for anyone other than children of school age. I mean, we have the other law which does.

THE CHAIRMAN: Dr. Burdette?

DR. BURDETTE: I am not sure what Dr. Bard

has moved.

THE CHAIRMAN: He is moving that the word, children, be deleted.

DR. BURDETTE: It seems to me Mr. Bond's question is talking about something else than I understood. It would be open to all.

DR. BARD: All of school age.

DR. BURDETTE: So school age would be determined by the Legislature, is that correct?

DR. BARD: That is right.

THE CHAIRMAN: That is an easy answer, but I am not sure it is a correct answer. I think the court would ultimately determine the question and not the Legislature. The Legislature's determination might be persuasive, but it would be for the court to say.

MRS. FREEDLANDER: By adopting this proposed motion, you are providing for free public education for all.

DR. BURDETTE: Why, if you say, all of school age.

MRS. FREEDLANDER: Because school age is indeterminable. The other portion of this is not free. The

other portion of this is not free. The second portion is not free, and I do not object. I favor adult education. I am a proponent of adult education, but I do not feel adult education should necessarily be free. I think some things people should pay for at least in part. I think children should not pay, but others should pay.

THE CHAIRMAN: Dr. Bard, may I ask you a question as an educator and ask the same of Dr. Burdette? Would you consider a student in one of the professional schools at the University of Maryland, for instance, as a person of school age, the Law School, Medical School, Dental School?

DR. BARD: In answer to your question, I would certainly consider one in our particular school as an individual of school age, yes.

THE CHAIRMAN: So that the effect of your motion in your mind, then, would be to require the State by the Constitution to maintain a system of at least community college?

DR. BARD: Might be, but not necessarily so. This offers the possibility for it to be so. As a matter

of fact, Mrs. Bothe stated a while ago the desire of this Committee was to provide such elasticity that school age to be interpreted to mean pre-kindergarten or nursery school age. By the same token, what I am saying here is that that possibility would prevail and not the necessity for providing for it.

THE CHAIRMAN: Except that this sentence is the compulsory sentence, this clause I should say. Dr. Burdette, may I ask you the same question as an educator? Would you consider a student in one of the professional schools at the University of Maryland as of school age?

DR. BURDETTE: Not necessarily. The language means to me, you have already put up a countervailing argument, the language means to me that a person is of an age determined to be an age to be in school by law. Take a person of my age in a professional school is not a child of school age, but perhaps could be made by law. Anybody of any age could be of school age, it could be up to twenty-one and after sixty, and I would like to get language which would make it clear the Legislature could determine the school age.

THE CHAIRMAN: The permissive part, I take it, is under the second clause. The compulsory portion is under the first clause.

DR. BURDETTE: I don't think we should have anything in here that gives free education to people forty years old. I don't want to prevent the Legislature from doing that in the year 2000 if they so desire. How do we do that?

THE CHAIRMAN: Any further discussion or comment?

MR. MILLER: The only comment I would make is that this talks about education, but what we are talking about is elementary education, and we don't say so.

THE CHAIRMAN: Mr. Hoff?

MR. HOFF: Mr. Chairman, they are talking about only free public schools, I believe, not professional schools or anything of that sort.

DR. BURDETTE: Right.

MR. HOFF: Or colleges certainly couldn't be covered by the term, free public schools.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: Congressman Miller, what would be the understanding if we left out the word, children, and said, all of elementary school age?

MR. MILLER: Suit me fine.

MR. MINDEL: I don't think so.

THE CHAIRMAN: That would eliminate all secondary schools, high schools.

Dr. Bard?

Before Dr. Bard closes, I would like to make a comment. My initial reaction was that the substitution of the word, persons, would be desirable. Listening to the discussion, I am very apprehensive, and I call your attention to the fact that the first clause provides compulsory system of free public schools. I do not think that necessarily means a school in the sense that we are thinking of it today as a school for the education of children because we refer to the School of Law, the School of Dentistry, the School of Pharmacy, the School of Medicine and many other schools, and we also have elaborate educational programs for adults. I would fear that if you left out the word, children, or put the word, persons, in place

of children, you would be requiring the State to maintain a system of free public schools for all persons of whatever age the courts might ultimately determine would be within the meaning of the term, school age. I point out to you the second clause which is not mandatory but permissive, and a little more than permissive, gives ample power to the Legislature to provide for adult education or free professional school education, but does not compel it.

Dr. Bard?

DR. BARD: We have talked a good deal about the fact that this particular Section should have the elasticity so that there would be the possibility of providing for very young children, perhaps even those of two or three years of age, and I think by deleting the word, children, and putting the emphasis on, school age, so this might be interpreted as the Legislature so finds necessary in the terms of the times, and my own feeling as an educator is that this whole phrase, school age, is being reinterpreted almost daily, certainly yearly, that giving it that elasticity is highly important.

THE CHAIRMAN: Dr. Burdette?

DR. BURDETTE: Couldn't we solve this problem somewhat by taking out the word, by law, after, provide, and put in, education and open to all of school age, as provided by law? Does that help it so that the school age could be provided by law?

THE CHAIRMAN: It would help it, but I think it might have other adverse effects.

MRS. BOTHE: It would take the whole mandate out of meaning.

MRS. FREEDLANDER: Yes.

THE CHAIRMAN: All right, the question arises on the motion to delete from the first clause the word, children, so the first clause as amended would read, The State shall provide by law for a Statewide system of free public schools sufficient for the education of and open to all of school age. All in favor, signify by a show of hands. Contrary? The motion is lost, 4 to 19. Is there any further motion with respect to Section 2? Section 3. I am going to suggest that Section 3 be presented by the Chairman of the Committee and that we then take a coffee break before discussion.

MRS. BOTHE: I will read it. Section 3.

The Committee proposes that a new Section be added to the Maryland Constitution covering an area that has not heretofore appeared there and that it read as follows: The University of Maryland shall be managed by the Regents of the University of Maryland in accordance with law, and the Regents shall have exclusive general supervision of the institution and the control and direction of all expenditures from the institution's funds.

THE CHAIRMAN: Make your presentation.

MRS. BOTHE: I have quite a bit of assistance here, who are more articulate than I am on the subject. I will present the Committee's thinking on the subject. The University of Maryland, as we all are aware, is one of the nation's outstanding schools of higher education. It is one of the oldest universities -- can you hear me?

THE CHAIRMAN: Go ahead, Mrs. Bothe.

MRS. BOTHE: We have entered on the Committee into a tremendous amount of discussion and debate to come up with this decision to present to you this proposed Section which would grant autonomy to the University of

Maryland. When I use the word, autonomy, I do not mean it in its strict legal sense. It has been refined and defined in our Report by the actions of the General Assembly in previous, in the Autonomy Act and does not mean that the University of Maryland would become a separate and independent of State government, but it does mean that the University of Maryland which now is under a statutory provision has control and direction of its own internal affairs and the expenditure of its own funds, would have that secured in the Constitution of the State. Now, I refer to the constitutional, the statutory autonomy of the University, and I believe, though I am sure, all Members of the Commission have not had an opportunity to go through the various materials which were sent out to you in order to aid you in making this determination.

This is a copy of the Autonomy Act appended to the letter dated June 23, 1966 to Judge Walsh from Dr. Elkins, the President of the University, and it is essentially the recommendation of the Committee that this be codified in the Constitution or that a similar security be granted to the University. We regard this recommendation

as a very progressive and enlightened step. Perhaps if adopted by the Convention, this might be the most substantial and meaningful change in the present Constitution. It would not just be a housekeeping measure, but a means of assuring the present eminence of our State University which has very rapidly developed in large part because the Legislature had seen fit to give it the independence with which to develop.

The University of Maryland, as we have come to understand it in our study of it for the purpose of this recommendation, is a rather unique function of State government. It is almost impossible to parallel it with the standard branches of government. It is extremely large. It has expenditures greater by far, for instance, than the Judicial Branch of the Government. Its effect on the citizens of the State, the people of the nation in terms of the immense amount of research and learning undertaken within its borders compares very favorably with the Government. I believe there are some 35,000 students there now.

MR. CASE: 28,000.

MRS. BOTHE: 28,000 students, many of whom are engaged in graduate work. It is the State's major research army and moreover, its effect goes way beyond the boundaries of the State. It is largely supported by Federal monies which require that the University be able to handle them without undue interference from State officials. The concept of autonomy for the State University and I might say, first of all, that the majority of State Constitutions give some recognition to their State University. I think it is some 26 that make mention of one or more of their State's institutions of higher learning.

Maryland, as you know, gives no recognition whatever in the present Constitution to any form of education beyond the public schools or the secondary schools. There is nothing very novel and something rather backward, we conclude, in Maryland's failure in its Constitution to give any specific recognition to its State University. The concept of autonomy being attached to the State University is also not new. We cannot say that too many States have embraced it. However, it seems to me the coming thing. It is a little hard also to say how

many States have it in their Constitution because the means by which the recognition and powers of the State University are worded in the various State Constitutions doesn't make it entirely clear which ones have the kind of autonomy we propose at the University of Maryland, and which have more or less, but some six States do seem to provide for autonomy of a nature similar to that we have proposed for the University of Maryland and either by coincidence, we don't know whether or not it is a coincidence, but it seems those States which do recognize and grant constitutional powers to the State University have the superior State universities or are among those States which are just emerging in the forefront of government and education do have model Constitutions. The University of Michigan has had constitutional autonomy since, I believe it was 1850, and it has not only become an outstanding university under those controls, but the concept has been so successful that that State has expanded the right to all of its institutions of higher learning.

For reasons we have expressed elsewhere in this Report and do not go to Section 3, we had felt that only

the University of Maryland should be recognized and granted constitutional autonomy. We feel that on a completely practical basis that this will be a forward step in the educational forefront in the State of Maryland, both in terms of its general government and in terms of its educational progress.

Dr. Elkins' letter is quoted at some length in our Report because at the time we prepared the Report, we were not aware that the Commission was going to be concerned with some of the materials that we have here. But we make it, we recognize our whole Report in some respects runs into some of the constitutional theory that this Commission has subscribed to, and we feel that this is an area where there must be a departure if for no other reason on strictly pragmatic grounds. We are not making this recommendation authorized to grant symbolic recognition to the University. We are making it because we feel a constitutional provision which makes unalterable the autonomy of the University, which makes it possible for a university which is so unique, and so far different from the other areas of government, its functions that is, it can only flourish and prosper with a constitutional

guarantee.

We do not feel that the budget people whom Mr. Case was very fond of, should have the right to determine what teachers should be paid and how much teachers should be in what area, what a particular building should be used for, or how their layouts should be constructed. We feel this is so much a matter of expertise in an area in which the budgetary system is less able to cope and which the University is well able to cope with, that it ought to be afforded constitutional sanction and that the University ought to be guaranteed that it will not suffer undue interference from the State.

The University has had the experience of autonomy since 1952 and as far as we were able to discover, it has not resulted in any disorder, it has not resulted in any misappropriation or misuse of funds. To the contrary, it has enabled the University to develop freely and to grow in a manner which we feel it could not, if it were constantly the subject of interference by officials of the State. We think it should be kept in mind that actually the need for autonomy is one which the Government created

rather than the University. As we understand it, the University had autonomy. It is a land grant college and was ruled by its Board of Regents and this predated the Budget Bureau and the tremendous growth of centralized bureaucratic services. What we are seeking to do, in effect, is to get back to the University or to guarantee to it what it traditionally has had during the 150 years of its existence.

We feel that this is an extremely important measure to be taken by the Constitutional Convention. Mr. Case has been a Member of the Board of Regents, is perhaps much more familiar with the inside workings of the statutory autonomy, and we were treated to a number of examples of the necessity for it. For instance, I think one example that Mr. Case will recite involves some intricate research machinery that there was a conflict as to nobody who knew how to work it, did they?

MR. CASE: No.

MRS. BOTHE: And an issue arose as to whether the experts at the University should decide what kind of machinery to purchase. So we don't think this is the kind

of thing that should be permitted to happen in the State. Once the funds have been appropriated, we keep in mind, not me, the University or the Committee or anyone else proposes that the University be given a free hand with the State's Treasury. The issue involved here is simply who is going to watch what funds are allocated and how they can be best met to meet the needs of the State's only university, and one of the major ones in the country.

THE CHAIRMAN: Thank you, Mrs. Bothe. Before we take the coffee break, let me just say this, so you can be thinking about it. From comments and discussions I have heard, there are at least four and maybe more points of view that various Members of the Commission want to express and to have votes on. They include the Committee's recommendation for autonomy of the University of Maryland, opposition to University of Maryland, or any other group, broadening the Committee's provision to include autonomy, not only for the University of Maryland, but also for Board of State Colleges, and I gather for certain other colleges, how far I don't know; and fourthly, to include the public school system or at least the Board

of Education and the State Superintendent of Education.

I don't know how we can quite fairly put up all of these propositions but certainly we will endeavor to have everybody who wants to have a vote on any of them have the opportunity to do so. In order to do it, we will have to proceed as orderly as possibly. We will have to follow the rules of debate of which I remind you each person on each motion speaks but once except the mover and speaks for not more than three minutes and the mover closes.

So if you want to speak on any of these proposals, and I gather many of you do, if you will utilize the time of the coffee break to formulate your thoughts so you can state them succinctly and briefly.

MRS. BOTHE: I did not make any comment on the Committee's recommendations, negative recommendations because it was my understanding that you wanted us to go through the positive proposals. Of course, if a motion is made on the subject of other institutions' recognition, I would want to present the Committee's views.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: Will we be able to question on

points of information?

THE CHAIRMAN: As we come back, the first thing will be questions. Just ask the questions, and after that, we will take up the motion.

Dr. Jenkins?

DR. JENKINS: I would propose an amendment to include the State colleges, but in the interest of time, it would be better to withhold that until we dispose of the recommendation of the University of Maryland; do you concur with that?

THE CHAIRMAN: Whether you take that first or not, I don't know. We will have to see how the debate develops, but you will have the opportunity to make the motion.

Mr. Sayre?

MR. SAYRE: Does this phrase --

THE CHAIRMAN: Don't ask questions now, ask them after the coffee break.

MR. SAYRE: This relates to something that is or has not incorporated. When we say, managed by the Regents, in accordance with law, does that include how

they are appointed?

MRS. BOTHE: There is an explanation of that.

THE CHAIRMAN: Let's hold the questions until after the coffee break except questions as to procedure.

(At this time a short recess was taken.)

THE CHAIRMAN: Are there any questions as to the recommendation of the Commission with respect to Section 3? Questions only at this period, please.

MR. SCANLAN: Several times during the course of the presentation, Mrs. Bothe used the word, autonomy, and yet I don't think ever explained the sense in which it was intended, not that the word is used in the proposed Section 3, but apparently the legislative intention behind it is to grant autonomy. Autonomy to me, means self-governing in all respects, and I wanted to know if this was the meaning the Committee had in mind.

MRS. BOTHE: It was not. Whenever the Committee uses the word, put the word in quotation marks. We use it as a convenience because we certainly do not mean that the University shall have absolute control over its finances and operations. What we mean, we tried to explain

beginning on Page 16 of the Report in the commentary accompanying the proposed language. We mean the Legislature would have the authority to implement the constitutional provision which says the Regents shall have exclusive general supervision of the institution and control and direction of all expenditures, that the Legislature shall have power to implement this by legislation, and we can see that the legislation would be along the lines of the present Autonomy Act which gives the University independence of State departments but requires possible audit, which requires that several employees be within the merit system and various other restrictions of that kind. Now, there is one -- the amendment to the Autonomy Act, and it is called properly the Autonomy Act which was passed, I believe in 1964 pertaining to the Catonsville campus of the University is what we feel would be abrogated by this provision.

In 1964 the Legislature passed an amendment to the Autonomy Act so that purchases made for the University are made through the State purchasing department. If this Section 3 were in the Constitution, it is our opinion

that that particular amendment would be unconstitutional. However, the balance of the Autonomy Act as we now have it and similar provisions to those which are contained in it would be perfectly proper for the Legislature to pass, and of course, the University would be subject to the Legislature when it came time for appropriations. It would have no firsthand grab in the State Treasury and could be made to give an account of its funds. The proposition is merely that after the funds are appropriated, the University has internal control and management and determination of how its funds are to be spent.

THE CHAIRMAN: Any further question?

MR. SCANLAN: The phrase as used, the University of Maryland shall be managed by the Regents of the University of Maryland in accordance with law, suppose the General Assembly could pass a law to put aside for a moment the Fourteenth Amendment objections to it, should pass a law providing that Freudian psychology shall not be taught in any public institutions in this State. Under Section 3, would such a statute be unconstitutional, or would the Board of Regents be forced to observe the

legislative command?

MRS. BOTHE: We would say it would be unconstitutional because Section 3 must be read as a whole. The latter portion grants the Regents exclusive supervision. We would feel that any invasion of the curriculum would be unconstitutional.

MR. SCANLAN: So the phrase, in accordance with law, does not mean very much?

MRS. BOTHE: It means that reasonable safeguards before and after the appropriation shall be made.

MR. SCANLAN: This is one before.

MRS. BOTHE: Not with curriculum. They couldn't constitutionally pass a law such as we have expressed it. However, they could pass a law saying that the University shall place all of its funds in the State Treasury.

MR. SCANLAN: But they pass the laws saying that employees of the State of Maryland must take a loyalty oath.

MRS. BOTHE: Possibly no.

MR. SCANLAN: These are important matters.

THE CHAIRMAN: Don't discuss. Just ask the questions at this point. Any further questions, Mr. Scanlan?

MR. SCANLAN: Not at the moment.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: Article 11 dealing with political subdivisions, the General Assembly has the power to create, abolish and so forth, and we mandate political counties, cities and so forth. We do provide for other political cities. Is that a group that would come within that classification, other civil divisions?

MRS. BOTHE: You are speaking now of the other recommendations of your Committee.

MR. CLAGETT: Here is my question basically: Are we here mandating a form of civil division in addition to counties and cities as provided for in Article 11.

MRS. BOTHE: You are talking about apples and oranges. We are mandating a form of division, but it is not anologous to the political subdivisions of which you are speaking. It is not a political subdivision. It is a department of government.

MR. CLAGETT: Going back to the question Mr. Scanlan asked a moment ago insofar as political subdivisions or other divisions, whatever definition may be given in the future to that, they are subject to general law and as I understood your answer in reply to his question here, you would not be subject to general law, it would be unconstitutional. I don't quite understand that.

MRS. BOTHE: I am not quite sure I understand your question. I don't feel there is any analogy between the establishment of the University and these various political subdivisions which will be established as the government of the people civilly and generally. This would be a constitutional bar, so to speak, but not a government or area of government.

MR. CLAGETT: How does it differ from an authority then?

MRS. BOTHE: You have a number of parallels, both with an authority and with a political subdivision. However, the fact is, it would have some analogous powers and would not make it in conflict either with the balance

of the Constitution or with the other powers of government. We are not suggesting, for instance, that if a student on the campus at the University of Maryland commits a crime that only these powers that be are the University and should try and punish him for it. We are merely speaking of the operation of the University per se, and I don't see that there is any conflict between our proposal and those of the Government and the various civil subdivisions of the State.

MR. MILLER: Along the line Mr. Clagett was saying, this being in the Constitution, you do not feel it would carry police powers with it?

MRS. BOTHE: No.

MR. MILLER: Why not?

MRS. BOTHE: The powers granted are general supervision of the institution and control of the expenditures. It has nothing to do with the general civil law. They are not creating a separate state. They are creating an institution which is given certain constitutional powers as is done in many other parts of the Constitution.

MR. MILLER: My reason for asking it, I went

to a university at one time where the charter antedated that of the State and the police and the city could not come in and make an arrest because it was off limits. Are we trying to create something like that in this constitutional autonomy they are getting?

MRS. BOTHE: Not at all. I assume you are speaking of a private university which is on private property and which the State couldn't enter on the property.

MR. MILLER: The grant came from the king as I remember it, and the State didn't have any say about it.

MRS. BOTHE: If a student doesn't keep proper hours in the dormitory, this would be the power to discipline him with the University exclusively. However, if the student rapes a girl in the next dorm, this is not within the province of the University.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: Mr. Chairman, if I understand the import of this Section, the residual control that the people of the State would reserve to themselves would be basically the power of appropriation. I wonder if Mr. Case or Mrs. Bothe would comment on a little bit of

the budget making procedure in relation to appropriations and specifically direct their attention to whether or not appropriations once made by the Legislature for a prescribed program would then be subject to the complete control of the Board of Regents without reference to the program which was proposed at the time of the adoption. That is a lot of words, but what I am trying to say is, can they divert the funds?

MR. CASE: I think to answer, I ought to give the Commission some insight as to just what happens and how the University's budget is made up, and then what happens after it is passed by the Legislature.

The first step, of course, is the meetings held with the President, members of his staff and the department heads for the purpose of determining what would be the requirements of a given program for a given year and after these have been prescribed by the budget and a list is in the President's office, a budget book is compiled and that budget book then is submitted to the Board of Regents.

The Board of Regents then holds hearings with

respect to each of the programs, generally grouped into colleges and the deans of the various colleges come before the Board and explain the budget and explain the reason for the changes, if any, and generally give an overall summary of the workings of their college during the year. An important thing to note is that at this particular meeting the State Budget Bureau's people are sitting in with the Board of Regents and they are asked, are free to ask all the questions, as a matter of fact, ask most of the questions to the various deans or to a department head if it goes that low with respect to the budget.

After that hearing, the Board of Regents can cut or increase the budget as they see fit, and then at that point, it becomes the University of Maryland's budget. Now, here is the big difference between the University budget and the budget of the State Department of Education that we were talking about yesterday, because after that budget has been formulated, it is then submitted to the State Department of Budget and Procurement, namely the Governor, and the Governor can cut it, can do

anything he wants, unlike the budget for the public schools which, of course, the Governor cannot cut, and that is what we voted on yesterday; and ofttimes does. We have had a number of instances where salaries of different people have been reduced against the wishes of the Board of Regents and this has presented problems. Now, when the Governor finally gets through whatever he is going to do with the budget and it goes to the General Assembly, the General Assembly traditionally each House holds a hearing on the University budget; and they can cut it so that again for the second time, it does not have the isolation that the State school budget has. It is subject to scrutiny then by the Governor and by the Members of the General Assembly.

When it finally passes, it comes out as part of the budget law. Now, here is the difference between the general budgets for other State agencies and the University of Maryland. Once the budget has become law, then the Board of Regents can spend that money within their discretion, and if it becomes necessary, to amend a program or to take on somebody or to change somebody's

salary at midterm. The University administration does not have to go back to the Governor because of the existing economy in it, does not have to go back to the Governor and request these changes to be made through a budget amendment which is authorized by the Board of Public Works.

What actually happens in practice, if the administration wants to amend the budget, it takes the matter to the Board of Regents and the Board of Regents goes ahead and amends the budget. I might say that in my experience, I have been on the Board six years now, there has never been an amendment where a program has exceeded its estimate in the budget. There have been amendments back and forth, but there have always been shifts. You don't get the proper staff you are going to get when the budget is made up and for some reason or another, there will be a surplus in that program which can be used in another area. But if it weren't for autonomy if a surplus developed, it would revert to the State and would have to be reappropriated through a budget amendment at the end of the year if there is a surplus

that surplus reverts back to the State.

JUDGE ADKINS: Would that be true under this proposed amendment?

MR. CASE: Yes.

MRS. BOTHE: I think a lot of people don't understand that once an appropriation has been made, it cannot be diverted under ordinary circumstances without a budget bill or without the permission of the Budget Bureau. In other words, if an appropriation for ten teachers of physical science has been made to the University of Maryland, and they decide that they can only hire five teachers but they would rather pay them twice as much, the University of Maryland is free to spend twice as much for half the teachers without the teachers. Without the autonomy, however, they would have to go back and get authorization for this action and wouldn't be able to take it independently. It is not a question of taking money. It is a question of being able to juggle appropriations after the money is made available without surveillance from outside.

MR. MILLER: In the appropriation bills are

there no general funds to program an institution which can be used without having to go back to the appropriating authority, to have an amendment?

MR. CASE: There never have been, Congressman. In other words, is what you are saying a general sort of contingency fund that can be used for any purpose?

MR. MILLER: Yes.

MR. CASE: I haven't seen the latest draft of it, but for the first time the Board of Regents requested such a fund this year.

MR. MILLER: In the Federal appropriation, within 10 per cent the head of the department can supplement one to take out the other, within 10 per cent.

MR. CASE: We have no such provision.

THE CHAIRMAN: I would like to go back to your last answer to Judge Adkins for the record, to Judge Adkins. He asked you if in this Section 3/you would make any change, and you said, No change at all. I take it you mean no change in the present practice but the present statute is statutory.

MR. CASE: Oh, yes, whether a change in the

procedure would be any difference.

THE CHAIRMAN: In other words, I take it what you are saying is that under the Autonomy Act of 1952 as amended, the institution now has the control and direction of all expenditures from the institution's funds?

MR. CASE: That is right.

THE CHAIRMAN: Can you tell us whether the language is the same?

MR. CASE: I don't think it is quite as precise in Article 77, Section 249(e). I have it right before me. It is not the same language.

THE CHAIRMAN: Mr. Martineau?

MR. MARTINEAU: I would like to, I guess this question goes more to Mr. Case than anyone else, in contrasting this recommendation with that with respect to the Judiciary, I am wondering why you feel that it is necessary for the independence of the University to have this control over the method of spending funds once they are allowed for in the budget, and the University can then spend them for whatever purpose the University sees fit, and yet at the same time, it is not, apparently

you don't feel this is necessary to protect the independence of the Judiciary Department. I frankly am wondering, I am not sure that it is necessary for the independence of the Judiciary, yet I wonder why you feel it is necessary for the independence of the University.

MR. CASE: Well, that question, Mr. Martineau, goes to the whole subject of autonomy and why autonomy is a desirable thing from the standpoint of the University and the difference is the difference between college professors and judges.

MR. MARTINEAU: I am not sure what you mean by that.

MR. CASE: They are different animals, and they have to be treated differently. You don't put birds in one kind of cage of the zoo and put gorillas in another.

MRS. FREEDLANDER: Which is which?

MR. MINDEL: Suppose the taking of an oath were abolished. Could the Board of Regents on its own authority require an oath of those required by it?

THE CHAIRMAN: Mrs. Bothe?

MRS. BOTHE: I would think certainly they could. They could impose any restrictions or conditions on employment that they felt were necessary and advisable.

MR. MINDEL: In reverse, you have here, there shall administer their affairs in accordance with law. If the law provides an oath, could the Regents say, We will not require?

MRS. BOTHE: If the taking of an oath by any governmental employee were constitutionally prohibited, I think that would supersede the right of any agency, no matter what its constitutional or statutory independence might be to override the Constitution.

Section 3, I believe, Mr. Mindel, you may have misread, because when we speak of, in accordance with law, we write that in conjunction with the latter phrase, and the intention, and I believe we are correct in assuming that it would be so construed as that the law would be circumscribed, that the Legislature could not pass a law which interfered with the rights of the Regents to have these rights of general supervision and control. They could only pass laws which did not enter

into this exclusive area such as for possible audit or for having employees in the merit system standard and things of that sort.

THE CHAIRMAN: Mr. Bond?

MR. BOND: I would like to ask Mr. Case two questions.

First, isn't it true that other State departments and other State educational institutions, you can adjust funds as between-line items without going to the Budget Bureau?

MR. CASE: I don't know.

MR. BOND: Well, let me say this.--

THE CHAIRMAN: Don't comment. Just ask questions at this period.

MRS. BOTHE: I could answer the question, perhaps, because in our discussions, we were given this time by the State Board of Colleges an example of their problem. They are unable to hire faculty at the prices allocated by the Budget Bureau, and yet they say they have excess funds. If only they could employ some of this surplus that they can't use to increase faculty

salaries, this would improve their situation and yet they say they cannot do it without the approval of the Budget Bureau which isn't forthcoming. So apparently, in this area at least in the area of salaries, although the money is available, it cannot be diverted within the institution.

THE CHAIRMAN: Dr. Jenkins?

DR. JENKINS: The theory of the program budget is that the institution can use any money within that program without outside approval. As a matter of fact, the institution may not do that. They must advise the Budget Bureau of any change in line items and the Budget Bureau declines to permit this. In other words, you may have an appropriation for equipment. You could not then use that for supplies without the consent of the Budget Bureau.

MR. SCANLAN: I got confused. Earlier Mrs. Bothe said that the University of Maryland had funds to hire ten teachers at a certain salary and decided to hire five at double the salary under the present budgetary procedures. A moment ago, you said there would be money

to increase salaries but nevertheless that money couldn't be used without getting permission of the Budget Bureau.

MRS. BOTHE: I was talking of the Board of State Colleges.

MR. SCANLAN: I see.

THE CHAIRMAN: Any further questions?

MR. SCANLAN: Just one more. During the course of your presentation you gave as one of the alleged reasons justifying the proposed Section 3, the fact that there are large amounts of Federal money that come to the University of Maryland and many times in connection with Federal grants there have to be a minimum of Federal and State and local restrictions. Do you have any facts that suggest that the University of Maryland has been impeded in receiving Federal grants because of any interference by the General Assembly of Maryland or any other agency of the State?

MRS. BOTHE: The growth of Federal grants, the larger number of grants they are getting today have all been afforded since 1952, so it is a little difficult to give an example of what might have happened had there

been no Autonomy Act.

MR. SCANLAN: Then your answer so far as you personally know, there has been no interference with the receipt of Federal grants due to any restrictions by the State of Maryland?

MRS. BOTHE: Dr. Elkins tells us if he did not have the statutory authority he has, that he would not have been able to obtain the numbers of grants, and I think Maryland ranks something like fourth in the nation in grants to any universities, that he would not have been able to receive these funds as readily as he has.

MR. SCANLAN: I was confused. I thought there was some present restriction that somehow impeded the receipt of Federal grants by the University of Maryland. I gather there is none.

MRS. BOTHE: No.

DR. BURDETTE: An amendment in 1964 excluded new payment.

THE CHAIRMAN: Any further questions? I have a few questions of Mrs. Bothe, just to find out the Committee's understanding. Under the Section, as your

Committee proposes it, would the University have complete control over the establishment of tuition, the amount of tuition?

MRS. BOTHE: Yes.

THE CHAIRMAN: Would the University, by which I mean the Regents, have complete control over the location of branches of the University?

MRS. BOTHE: Yes, it would, subject, of course, to the Legislature's appropriation. There is a great deal of discussion about what would happen if the University didn't use the funds for the purpose represented in the Legislature, but I think it has to be kept in mind that the University must come back every year to ask for more, and if they represent that they want funds to put up a fine arts building and then put the thing down in Cumberland or something, the next time they ask for a building, I doubt if they will be so successful. This check is always there, and the likelihood of abuse from what we understand, there has been virtually none under the Autonomy Act.

DR. JENKINS: Mr. Chairman --

MR. CASE: The complete answer to that is that a university cannot build any building, can't put any branch of the university anywhere unless and until the General Assembly authorizes the capital funds for such building or for such branch.

In other words, when we had the big to-do about where the branches were to be located, actually it was not necessary to have a declaration from the Legislature that a branch should be put in Baltimore County. The Board of Regents could have sat over here in the meeting room and said, We are going to put a branch in Baltimore County, but if they didn't get the necessary funds from the Legislature to buy the land and put the building up, we have no funds to do anything like that with, so the Legislature has absolute control over the location of branches through the appropriation of capital funds.

THE CHAIRMAN: My next question, and I am putting these --

DR. JENKINS: Mr. Chairman, I was going to state the same thing Mr. Case stated. Further, the Legislature has the control in the succeeding year. Let's say

the University of Maryland found a place where there are buildings, still they come to the Legislature and this is not really the exclusive control that some people envision.

THE CHAIRMAN: I am just trying to get the point in the record as to the intended meaning of these particular provisions. Mrs. Bothe, you said in answer to earlier questions that under this language you think the State could provide that all the University funds could be put in a certain bank account or subject to certain controls.

Did I understand that correctly?

MRS. BOTHE: Yes, I believe the present Autonomy Act calls for deposit with the State Treasury.

THE CHAIRMAN: I am not thinking of that. I am thinking of the language of the Section. Is it the intention of the Committee that in saying the Regents shall have exclusive control and direction of all expenditures from the institution's funds, that that is nevertheless subject to the power of the Legislature to prescribe safeguarding controls?

MRS. BOTHE: That is right.

MR. CASE: That is the law now.

THE CHAIRMAN: Now, would the, under this language, would the Committee feel that, and this follows a question of Mr. Clagett's, that if the Legislature passed a general law applicable to educational institutions that it would or would not be applicable to the University of Maryland if it dealt with the matter of, that could be within the term, general supervision of the institution?

MRS BOTHE: It would not be unconstitutional.

THE CHAIRMAN: So the answer to Mr. Clagett's question is that the general law would be subject to this limitation. The final question, if, under this language, the Legislature appropriated a total amount for the support of the University for the next year, I take it that the University's total funds would then be the amount appropriated plus receipts from tuition, plus receipts from Federal Government, endowments, and so forth? Would the meaning of this last clause be that the Regents could spend the total sums so appropriated for any purpose

at all, regardless of the programs that had been specified?

MRS. BOTHE: That is right, but probably for the one year.

THE CHAIRMAN: Any further questions?

Mr. Haile?

MR. HAILE: I believe the Legislature has in passing on a budget bill sometimes imposed a condition before appropriating a lump sum for a program. Is it the intent of this constitutional provision to prohibit that power, or to withdraw that power from the Legislature?

MRS. BOTHE: I am not sure I entirely understand the question but if, as I understand it now under the Autonomy Act, if the Legislature appropriates a sum of money to the University for a given purpose, then the University's Board of Regents determines not to use the money for that purpose, they are not precluded under the Autonomy Act.

THE CHAIRMAN: I take it, Mr. Haile's question means that if the University, if the Legislature in approving the budget appropriates one million dollars and

specifies this money shall be used only to build an annex to the Law School, his question is, could the Regents under this language use it for salaries, for instance?

MR. CASE: They could not.

THE CHAIRMAN: Under this language?

MR. CASE: That is right, they could not.

THE CHAIRMAN: Can you tell us why?

MRS. BOTHE: I am not sure under this language that this would be supervision of the institution and control of expenditures from its funds. I assume this would be a capital appropriation for a specific purpose which was not part of the general funds of the University.

THE CHAIRMAN: Well, use a different illustration.

Mr. Haile?

MR. HAILE: Suppose the condition of the appropriation is that the President of the University's salary not exceed $250,000 a year. Would this prohibit any such condition upon the appropriation?

MRS. BOTHE: If the Legislature passed a law that the University's salary couldn't exceed $250,000.

MR. HAILE: I said imposing a condition of that nature.

MRS. BOTHE: I don't know that they could impose a condition like that.

MR. HAILE: It has been their practice in the past.

MRS. BOTHE: For the State?

MR. HAILE: Yes. I wondered if that would continue.

MR. MILLER: I would like to understand one thing. You both said they might be able to do it for a year. Under this constitutional provision, the year limitation is that the Legislature might not give them an appropriation the next year, they couldn't recoup the money if the Board didn't do what they were supposed to do.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: Do I understand that aside from adding constitutional status and protection, this Section will give the University no additional freedom of choice that it does not now have under the Autonomy Act?

MRS. BOTHE: The only change it would make in the practical workings is that the Autonomy Act would be rendered unconstitutional.

DR. JENKINS: Mrs. Bothe, let me ask if the insertion of several additional words would be acceptable to the Committee. Is this a question or debate?

THE CHAIRMAN: That is a debate perhaps. We will give you the opportunity to ask that. Any further questions? Then, we will proceed to debate. I am uncertain as to the best way to proceed. I was thinking of it during the coffee break, and it occurred to me that perhaps the best way would be to consider motions to amend what is proposed by the Committee before you consider motions either to approve or reject. What is your feeling?

MRS. BOTHE: Mr. Chairman, I would suggest, in view of the method by which the Report has been presented and also in view of Mr. Case's commitment to be elsewhere and his interest in this topic, I would like to move the adoption of Section 3 and have that matter passed upon and then have any amendments which may be offered debated and acted on.

THE CHAIRMAN: The difficulty is that somebody moves to amend that by amendment, you would get it back the same way.

MR. SCANLAN: I was going to save my amendment until we had voted on the proposed amendment to the

draft, but to accommodate Mr. Case and not make him late for the football game, I now move that we delete Section 3 in its entirety.

MR. CLAGETT: Second the motion.

DR. BARD: Would it be out of order, then, to move the adoption of Section 3 the proposed amendment. Is that now out of order?

THE CHAIRMAN: You could move it as a substitute, and I am afraid we would end up spending a lot of time on voting whether we adopt the amendment to the substitute or whatnot.

DR. JENKINS: Mr. Chairman, it seems to me that the basic issue presented to the Commission and rejected, then the amendments are moot. We might save time by this procedure.

MR. CASE: I think that is so.

DR. JENKINS: I would propose if this passes that an amendment to extend this, but if this doesn't pass, there is no point in taking the time.

THE CHAIRMAN: My only point is if anyone moves an amendment or a substitute, they will be in order, and

I will have to recognize them. Dr. Bard?

DR. BARD: I so move and here is what I should like to submit as a substitute.

MR. BOND: Out of order. We have offered two motions, and here is a third.

MR. SCANLAN: There is only one motion on the floor.

MR. BOND: Mrs. Bothe attempted one.

THE CHAIRMAN: No, she made a suggestion.

MRS. BOTHE: The motion on the floor is the way the Committee would like to proceed.

THE CHAIRMAN: Let me, before we consider any amendment or substitute and without attempting to rule anybody out of order, we are under pressure of time. I am not merely thinking of the private engagements of the Members, but of the Commission. We have three other Reports to get through this afternoon, and we have to eliminate if we possibly can waste motions and use less motions. I take it, Mrs. Bothe, that it makes no difference to you whether the debate is on a motion to approve or a motion to delete.

MRS. BOTHE: No.

THE CHAIRMAN: Before we actually act on the motion, can we have or take a sense of the meeting as to whether most people want to consider amendments first or not because I cannot rule out of order a motion for a substitute to an amendment, but I would assume that if the great preponderance of Members of the Commission would prefer not to consider amendments right now, that most Members would follow that.

DR. BARD: The only thing I would like to say is that nothing has been said here this morning at all in regard to the possibility of a substitute motion which would to my mind strengthen all of the arguments that have been proposed in favor of the motion, and therefore, it would be unfair as I would see it to deal with the motion until we consider the possibility of strengthening it.

THE CHAIRMAN: All right, maybe we are losing more time debating procedure than to go ahead with the debate.

MRS. BOTHE: One comment on the procedure. I

have talked to a large number of the Members of the Commission, and I am aware of their views as to the debate that will develop and the question of whether the University of Maryland does or does not get recommended for autonomy, and if we could get a vote on that subject, then I think we could proceed either to expand or to forget the balance of the discussion, because I don't believe there is anyone who feels that there should be an autonomy provision which does not at least include the University of Maryland.

THE CHAIRMAN: Well, I can't rule out of order. I think if we don't debate the procedure and go ahead, we will make better time. What is your substitute?

DR. BARD: The University of Maryland shall be managed by the Regents of the University of Maryland in accordance with law, and the public State colleges of Maryland shall be managed by the State Board of Trustees of the State colleges in accordance with law. The Regents and Board in both cases shall have exclusive general supervision of the institutions and the control and direction of all expenditures from the institutions',

plural possessive, funds.

THE CHAIRMAN: Is there a second? The motion for a substitute fails for lack of a second. Mr. Scanlan?

MR. SCANLAN: I believe that leaves my motion in the pending order of business, and may I speak to the motion?

THE CHAIRMAN: You may.

MR. SCANLAN: I am very much opposed to elevating the University of Maryland in the words of Mrs. Bothe, to another constitutional department. I went along with the elevation of the Public School System in effect so far as budgetary proceedings are concerned to a constitutional department of government. At least there, there was some justification. The presentation of the Committee this morning has in my mind, includes not a scintilla of justification except as Mrs. Bothe again put it, we have to take Dr. Elkins' word for it. Well, I don't.

There is no evidence at all that the University of Maryland has not, in her own words again, flourished without constitutional autonomy. I don't dispute the high place the University of Maryland has achieved in the

educational circles, but there are others that would. I realize and believe it is true that there are only four States who have elevated their universities to constitutional status. They are California -- and California has shown that one does not escape the vicissitudes of politics. In the words of Thurman Arnold, you can never take the politics out of politics. The other universities that are elevated to constitutional status are Minnesota, Michigan and Georgia. I would be one of those who contest the proposition that the University of Georgia is a first rate institution, constitutional autonomy or not.

The statutory autonomy under which the University of Maryland has flourished has worked well. Certainly, it is always a risk that a Legislature of the future might repeal it, amend it or jettison it altogether, but again, that is one of the risks of democracy. If every institution or agency in this State that was afraid that at sometime a Legislature would act arbitrarily or capriciously and therefore demand constitutional protection, we would have a document 100 pages long. I have seen no

evidence of the Federal programs that have been interfered with because of any restrictions of the State. In short, as I have throughout all the meetings of this Commission, I place my trust and faith where it ultimately must be placed, in a democracy, in the representatives of the people, and the General Assembly of Maryland.

The University of Maryland should not be immunized from future acts of the representatives of the people.

THE CHAIRMAN: Mr. Scanlan, your time is up. Debate.

Dr. Jenkins?

DR. JENKINS: There are two issues here, of course. First, should the University have autonomy; and second, if so, should this be in the Constitution? I could give a half hour speech, but I don't have that much time on the necessity for autonomy. We do regard education as a sacred cow and are making something special of educational institutions here. Currently, decisions are made by administrative officers which in the view of almost all educators should be made at the level of the Board of Trustees or the administration of the college.

I think this should be in the Constitution first to make it permanent and not subject to the vicissitudes of political or personal fortune, and second, that it expresses a basic policy, the will of the people that the University should maintain this autonomy as defined at this point.

THE CHAIRMAN: Further debate?

Mr. Miller?

MR. MILLER: Mr. Chairman, and Members of the Commission, let me start out by saying that I have a great sentimental attachment and regard for the University of Maryland, although I was not an undergraduate there. My son was, though, and there is a lot of sentiment in my family because when the college moved to College Park, according to their records, my great-grandfather was its first President; and at that time it had 100 or so acres of land at College Park, and its faculty consisted of three professors and its student body was less than 300. It has not been in the Constitution, and it has prospered, and we are proud of it. But it seems to me we are getting far away from the original goal of this Commission, which

said that we were not going to build up a Constitution.

We wanted it flexible, and I, for the life of me, cannot see why it wouldn't be more controversial to have it in the Constitution and frozen. It has prospered since 1859 when my great-grandfather got interested, but I don't see that we have a right to make it or any other State institution frozen into the Constitution, and I think we will be going against all of our overall concepts if we begin putting individual institutions with extra-territorial powers into a Constitution, and I would therefore second entirely what has been said by the author of this motion.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: Speaking in favor of the continuance of Section 3, I would like to say this: That, first of all, we are not in any sense freezing College Park in the Constitution. College Park and the University are there and have been there many years and will continue to be there, regardless of what we will do. What we are doing, we are growing in three areas. We are giving exclusive supervision and control of expenditures to the

University of Maryland. We are limiting the management in accordance with law, areas of management which are, for instance, the possible audit and so forth, and the deposit of funds, those financial things will continue to be supervised by the Legislature. We are giving the supervision of the general scholastic operation of the institution to the person, to the persons, the Regents, where it should properly belong and have proven themselves over a period of years. For instance, in the last ten years, since the Autonomy Act was passed, we have seen the University of Maryland stature grow until it now is one of the leading institutions of the nation, and I would be in favor of further enhancing that position by recognizing it and guaranteeing the supervision.

MRS. FREEDLANDER: As a Member of the Commission that proposed this, the Baltimore City Charter and the Baltimore County Charter give this kind of management responsibility to the Boards of School Commissions honors in each instance. They get money from the City and from the County, and they are allowed to manage their funds.

THE CHAIRMAN: Dr. Bard?

DR. BARD: Recently the State of Maryland set forth a concept known as the tripartite system of higher education. It made it clear that each segment of that tripartite system was intricately tied together and that if one portion of that segment were separated from the other two portions, all three would fall apart.

It seems to me that to take one segment of the system and to set it apart is to destroy the whole concept of the tripartite arrangement which I think is basic to the progress of higher education in Maryland. Some of the arguments that were set forth in regard to the needs at the University of Maryland hold equally true, if not more so, for at least one other segment of this tripartite arrangement in terms of the budgetary necessity and so forth, and in terms I might say, of enrollment and growth for this clear illustration. Let me say that over 33,000 students will be enrolled in the public State colleges.

My point is that it is highly important that we not separate one segment of the tripartite arrangement and call attention to it in the Constitution and leave

out other segments.

THE CHAIRMAN: Mr. Bond?

MR. BOND: I would like to point out according to Dr. Elkins' letter, there were seven States, not three, that have put this constitutional safeguard in. I would also like to say from my own personal experience as a graduate of the Law School and who went to the Law School twenty years ago when the Law School was more or less undermined and not thought very highly of by my undergraduate school, only until autonomy came forth in 1952 has the undergraduate school and the whole University prospered.

I think we should continue to help the University, and I see no objection to putting it in. I don't think it is a lot of putter in the Constitution. It is an important and integral part of the Constitution.

THE CHAIRMAN: Dr. Burdette?

DR. BURDETTE: Mr. Chairman, I have been very hesitant to speak on this. Everybody here knows I am on the Staff of the University of Maryland. I think I can speak by making the point I speak only for myself. I

speak not for the University and indeed, it is because of the growing nature of autonomy that I can speak, perhaps, only for myself. I would like to broaden this discussion a bit by point out that in the letter which has been given to us addressed to Mr. Eney by Dr. Elkins on the 6th of August, and which I read for the first time last night, on Page 3, the second new paragraph, Dr. Elkins discusses what I profoundly believe is true.

He opens it by saying the public university is not just another State agency. It must teach and extend knowledge to the people by appropriate search, must provide an open quorum and must have the freedom to learn what is to learn.

Now, I would like to speak as an individual and looking from the faculty point of view. Here we are on the cutting edge. We have talked about business this morning, I think, more than faculty members would ordinarily be likely to do. Let me talk about the other angle of it. Because there comes in society a place wherein we do differ from one another in universities, and we are free to do it, and I call to your attention I have differed

with Mr. Case who is on our Board because I feel this great freedom in a university, he is a personal and professional friend, but I differ with him without any appreciable feeling that there may be conditions which are central here to us. It may very easily be said in the affairs of the State that a university ought not to feel some trepidation about these matters, about when a new field of knowledge needs to be investigated. Those who investigate it sometimes have to go out into new programs and new activities of an intellectual character which in a State agency, to my knowledge, and in the Federal Government, might be said by superiors, Well, don't discuss that. I can frankly say one of the reasons I left the Federal Government and came to the University of Maryland came from the angle that indeed I was told I could not continue to write encylopedia articles because it might involve speaking for the Federal Government.

We feel so strongly in faculties that we must be individuals, and I emphasize I speak as an individual here. I would say the faculty has not discussed this as a policy, but it would be a very strong faculty sentiment

for this type of policy as proposed to the Committee.

THE CHAIRMAN: Mr. Della?

MR. DELLA: Mr. Chairman, I have no real problem about this Section, but I think it really is not necessary to be put in the Constitution. The University of Maryland through its actions has progressed over the years to a great extent of success, and by the autonomous power granted to it since 1952. If we put this in the Constitution, the University of Maryland, the State institutions would have just as much right to come in for the same recognition. I don't think they are in the position to have the maturity to be put in, but I feel as long as the University of Maryland is progressing as it has that it is not necessary to have it in the Constitution.

THE CHAIRMAN: Any further discussion?

JUDGE ADKINS: I guess it is maybe too late for questions, but I am confused by this whole problem. The surgery that has been suggested here is pretty radical. I wonder if there is any merit in leaving in some reference to the University of Maryland and its Regencies with some reference to its controls, but, however, limiting the nature of those controls to a non-exclusive control? Is there any merit from the point of view of proponents of Section 3 in having a reference to the University of Maryland in the Constitution without necessarily going to the actual extent of Section 3 and having complete constitutional autonomy?

THE CHAIRMAN: Mrs. Bothe was shaking her head.

MRS. BOTHE: I gather, Judge Adkins, you are referring to the word, exclusive?

JUDGE ADKINS: Really referring to the concept of whether there is merit in having a reference to the

University of Maryland and it reaches into the Constitution without giving it the full autonomy proposed.

MRS. BOTHE: Take me out of the proposal, reduce it to the kind of thing some members I feel, frankly feel are symbolic.

THE CHAIRMAN: Any further discussion?

MR. HOFF: Mr. Chairman, we are having an educator run the University of Maryland at the present time. That has not always been the situation, and it may not always be the situation in the future. We are fortunate in having a Board of Regents at the present time with people such as Mr. Case. A Board of Regents is capable of exercising its own judgment. That has not always been true in the past, and perhaps will not always be true in the future. In case something should happen that a strong but irresponsible person should become the President of the University of Maryland and gained control of the Board of Regents and continued to act irresponsibly with the State's funds, I do not think that we ought to burn the bridge that we would have to cross in order to get back to the land of responsibility; and

if we put a constitutional provision such as this in the Constitution, we have done just that. We have lost all legislating and executive control over the affairs of the University of Maryland.

THE CHAIRMAN: Any further debate?

MR. MINDEL: This appears to me as evidence of a certain amount of distrust in the Legislature. We here are trying to upgrade the Legislature.

THE CHAIRMAN: Mr. Case?

MR. CASE: Mr. Chairman, I feel very strongly about this particular subject, not only because of my experience on the Board of Regents and which I have served for the last six years, but because I am a graduate of the Undergraduate and Law School of the University. Let me say first we are talking about a great university now. It hasn't always been that way, but today it is. The President of the United States himself said that the University ranges in the first ten schools of science in this entire country, both State and private. Now, we are not talking therefore about the kind of a situation we had in the early Fifties and the late Forties, and the

thing that Mr. Hoff and Dale Adkins are familiar with, namely the schools of yesteryear. The argument has been advanced here that there has been no showing by Mrs. Bothe that autonomy is needed. Let me cite three examples in the time I have.

First, with reference to the professional staff. The University of Maryland is great in the sciences largely because of the advent of one man who built a very strong department, physically. This man is in the greatest demand of any single person that we knew about in the country. If it had not been for autonomy, we could not have kept him. We kept this man for twelve years at the University until he was able to build a great department. Today he is head of Stonybrook which is the graduate branch of the University of New York State and his number two man was the number one scientist of Johns Hopkins.

Now, secondly, Mr. Scanlan says there has been no evidence we have been impeded in getting money for research. The exact contrary is true. If we didn't have statutory autonomy, many, many governmental grants would

not have come. But more than this, there comes a time when you need trained people, people that demand large salaries and can be hired on a short term basis. With the Autonomy Act, the University can go out and get those people and the research funds. Without it, you would have to get approval from the Board of Public Works before you could ever enter into this, and this would be virtually impossible.

Thirdly, with reference to property acquisition, the thing that Mrs. Bothe was talking about was the purchase of computers. The University of Maryland has one of the finest computer centers in this State. The center itself and the computer in it cost better than 3½ million dollars. Of the 3½ million dollars, almost 2 million dollars was donated by IBM. IBM came to the University and asked first, Can you use this money as you see it, or do you have to get some politician's okay? We were able to tell IBM that the autonomy of the University permits us to use this computer in the way we think it should be used.

THE CHAIRMAN: Mr. Case, your time is up.

MR. CASE: For that reason, we got it. Because of the importance of this matter, I would like to extend my remarks.

THE CHAIRMAN: Make it brief.

MR. CASE: To give you the converse, when as Mrs. Bothe points out, when the Act was finally passed authorizing UMBC, the Legislature in its infinitive wisdom eroded the time so the Board of Regents had to back away and go through the State for various pieces of equipment. The result of that was that you almost didn't operate on schedule, the reason being that purchases had to be made through the Budget Bureau and all the red tape connected with that, whereas the University could have gone out and done this purchasing at the same price and the State gets it because it is on public bills, and we would have had a much more efficient operation out there and an operation that would have opened prior to the time it did.

One final thing. Mr. Hoff says that it may be a time when some ogre gets ahold of the University. He admits Dr. Elkins is one of the finest public educators

in this country, that an oligo may get ahold of it and do away with autonomy and so on. My answer is that is the old argument of burning down the house to get rid of the rats. There is no reason at all to suspect this is going to happen because of the preeminence of the University, and our right today in this State. But I say to you, if that ever did happen, there are plenty of procedures left in the Constitution to get rid of the President. Bear in mind, ladies and gentlemen, that this autonomy requests a very restrictive thing. It is not giving the University a blank check. All it is asking is that the University be permitted to manage its own affairs after the appropriations have been made. All of the safeguards are here and more that deal with educational institutions other than the University. They are all here, and in my judgment, this is the very least that ought to appear in the Constitution. I say to you that if you want, the issue is simply this, if you want a great university, something that we all can be proud of in this State, then this is the right way to go about it. If you want the humdrum experience we had from 1920 to 1952,

then let the Legislature control it, and that is what you will get.

THE CHAIRMAN: Any further discussion? Debate?

DR. BARD: Is it possible to explain one's vote? That is not in our rules before he gives it.

THE CHAIRMAN: I suppose so. It ought to be held to a very brief explanation.

DR. BARD: It will be most brief and most unusual.

THE CHAIRMAN: Any further discussion?

Mrs. Bothe?

MRS. BOTHE: I would like to say a couple more words because I think a lot of this discussion reflects a lack of understanding of the very unique position that the State's University is in. Someone asked Mr. Case why he felt it was different to control appropriations to the Judiciary and not to the University and that pinpoints what we are talking about. It is perfectly all right for the Budget Director to decide that the Clerk of the Court ought to get a few thousand dollars more or less or that the desks ought to come from State Utilities

or be purchased from Lucas Brothers. He is not interfering with the judicial process when he does this. He is not affecting the opinions of any judge or the means by which any litigant comes to court or the essense of the judicial process. But when a Budget Director decides what kind of computer the University of Maryland should have and how it should use it, it is going to invade the very heart of the educational process in Maryland. There is no other department, there is no other area of State government which is entitled as the University is to the exclusive management and control of its internal affairs. It is a different cup of tea. It is utterly unique for reasons I think we can all appreciate generally. I have done some reading in particular on the subject, and I have become utterly convinced of the propisition that we cannot consider the University of Maryland and the State universities in the same context as many of the other branches of Government and inclusion of it in the Constitution is not going to create a precedent for inclusion of other areas of government. This is unique.

THE CHAIRMAN: Any further discussion? If not,

before Mr. Scanlan closes, I would like to state my views without argument. I am opposed to the inclusion of constitutional autonomy for the University of Maryland because I don't think it is a matter which should be included in the Constitution. At the same time, I heartily favor a very substantial grant of autonomy by the Legislature. Those seemingly inconsistent statements may be explained by this simple statement. In academic matters, the University ought to have the utmost measure of autonomy. I tried to draft something that would to my mind be satisfactory in granting academic autonomy without the other problems. I was unable to do so. It seems to me that since it is a State university, the ultimate authority must be in the Legislature. I think that the Legislature and not the University ought to have the right to say what the two issues should be, ought to have the right to decide in an overall way at least, the controls over the expenditures of the money and so forth.

Thirdly, I am very much troubled by the language of this Section even if we approve constitutional autonomy. I do not know what is meant by the phrase, in accordance

with law in the first phrase in light of the second two phrases, and the explanations of the Committee have not relieved my mind of the doubts. Also it seems to me that the last two clauses in constitutional language grant complete and unfettered control. Mr. Scanlan, you want to close?

GOVERNOR LANE: May I say something?

THE CHAIRMAN: I am sorry.

GOVERNOR LANE: My confusion about it is that we have had numerous troubles that the University has, but since 1952 from what has been said, increasingly the University has been assisted, or to put it in a few words, has been granted legislative autonomy. Could this be accomplished by a review or presentation to the Legislature to expand the autonomy rather than to put it in the Constitution which to a great extent is irrevocable? I think there should be a tie between the representatives of the people with respect not only to the University, but with all the other branches of the Government, so that we don't wind up gradually by having the head of the Government or its operation out of control.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I just want to repeat Mr. Bond's point about seven Constitutions referring to a State Constitution, but only four of those Constitutions grant autonomy of the type sought here. There is no question about the wisdom of the statutory autonomy under which the University of Maryland has flourished. As Governor Lane suggested, if it isn't sufficient, an amendment could accomplish everything accomplished here.

As a matter of fact, converting the University into a constitutional monopoly and assuming the proposition that Mr. Hoff referred to, that a man not in sympathy with the educational objectives would become its president, it is entirely possible that freedom of debate, factual freedom of thought and exchange might diminish under constitutional autonomy. In short, constitutional autonomy neither makes or mars a great university, and there is no need for it in the Constitution.

THE CHAIRMAN: Ready for the question? The question arises on the motion to delete Section 3; after we take the vote I will give an opportunity to any who want to, to make a statement in explanation of their

votes and suggest they hold it very brief, 15 seconds perhaps. All those in favor of the motion, the motion to delete Section 3 in its entirety, please signify by a show of hands. Contrary? The motion is carried, 11 to 10.

Dr. Bard?

DR. BARD: I would like to explain my vote because I think it would be important in terms of perhaps proposing another motion with such a close vote. A good deal was said about academic freedom. How does academic freedom differ for those who teach at the graduate level at a State level, from those who teach at State colleges? A good deal was said about the seven constitutions, many of those embrace the entire higher educational system. A good deal was said about budgetary restrictions. This holds true at the entire higher educational spectrum, and so my vote was a negative one because I felt that it picked out but one segment of the tripartite arrangements. I am hopeful that perhaps we can provide for the whole arrangement.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: Mr. Chairman, I listened carefully to the pros and cons. I thought it boiled down to a simple issue of whether you were voting for constitutional autonomy or statutory autonomy, and then I moved one step further and came to the conclusion that constitutional autonomy deserved a progress and development and state of affairs which was good and would continue to be made better, and therefore voted against the motion.

THE CHAIRMAN: Any further explanation of the votes? Mrs. Bothe, anything further with respect to your Report?

DR. JENKINS: Mr. Chairman, I want to make a motion.

THE CHAIRMAN: Go ahead.

DR. JENKINS: I move the following statement appear in the record and minutes of the Commission, and I doubt this will take very much time. The rejection by the Commission of provision for constitutional autonomy for the University and other interested State colleges is not to be construed as disapproval of provision for

statutory autonomy for these institutions.

THE CHAIRMAN: Just a second. Is there a second?

DR. BARD: I second.

DR. JENKINS: The obvious purpose for having this in the record is that when and if the issue comes up in the General Assembly, it will have some effect on the opponents of autonomy.

THE CHAIRMAN: Any further discussion?

Mr. Bond?

MR. BOND: I just wanted to ask --

DR. JENKINS: As this is stated, it doesn't say we approve it necessarily, either.

THE CHAIRMAN: Mr. Bond?

MR. BOND: What is statutory autonomy?

DR. JENKINS: Provided by statute.

MR. BOND: You heard Mr. Case say it could be taken away at any time. I wonder if that means anything.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: Would Dr. Jenkins be willing to have a slight amendment that would have the effect of,

what was the wording I had in mind, that our vote here has not taken away any possible support to statutory autonomy.

THE CHAIRMAN: I take it that is exactly the purpose of Dr. Jenkins' motion, and I would also take it that every Member of this Commission is in sympathy with it.

Mrs. Bothe?

MRS. BOTHE: The debate speaks for itself. As a matter of fact, I am wondering if the motion wouldn't water down the point rather than make it because I think the record should show it does infer essentially that the vote as taken was actually in favor of autonomy. The person who did vote and subsequently explained it has explained he didn't think there was enough autonomy in the proposition.

THE CHAIRMAN: The only difficulty is that not every Member who voted expressed his views.

Ready for the question? The question is on Dr. Jenkins' motion that the minutes contain the statement that he has read and that the reporter has to the general effect that the vote to delete Section 3 is

in no way to be taken as an indication that the Commission is opposed to statutory autonomy. All those in favor, signify by saying Aye. Contrary, No. The motion is carried unanimously. Anything further, Mrs. Bothe?

MRS. BOTHE: I don't know whether the other negative aspects of the Report will be brought up. I know you mentioned that you wanted to be brought up on the discussion of the Superintendent of Schools.

THE CHAIRMAN: I think in view of the turn that the debate on Section 3 has taken that that can be left to the presentation of the Committee on Executive Department. It occurs to me that somewhere in your Report you itemized seriatim the proposals. I wonder if we could save time.

MRS. BOTHE: Pages 4 and 5.

THE CHAIRMAN: No, I am thinking about the positions taken. It begins on Page 5.

MRS. BOTHE: The first positionwe took regarding Section 3 of the present Article VIII, there was a great deal of comment made on this Section, both tied in with Section 22 of Article III and as it stood on its

merits. We found education was about emotional as education itself. Examination of Section 3 led our Committee to the conclusion that it was meaningless and that it would serve no purpose to perpetuate those provisions in the new Constitution. Words similar to those found in the Section appear in a number of Constitutions. Most of them are older Constitutions because in the good old days, the habit was for the State to impose particular taxes for the raising of funds to support the schools and the purpose, there was such a thing as a school fund which comprised the revenues of specially earmarked taxes, and it apparently was a legislative boondoggle at one time to levy a tax for school purposes, and then use the funds for some less sympathetic cause. For that reason provisions of Section 3 were contained in the Maryland and many other State Constitutions. However, today we do not have special State taxes, and I say State taxes, I mean those imposed by State Government exclusively for the schools. The State contributions to maintenance of the public school derive from the general fund of the State and the only school funds, State school

funds which exist is a few thousand dollars which are earmarked for the use of the schools. They are of such small consequence that they hardly need constitutional protection.

MRS. FREEDLANDER: A point of order, Mr. Chairman. I feel this is out of order since we adopted the provision of the Report, and it was to be a substitute for the Article as it appears in the Constitution. I don't see the point at this time.

THE CHAIRMAN: Let me make the suggestion. I don't think it is out of order, but I don't think you need discuss these positions extensively unless someone wants to. You might just state the recommendation.

MRS. BOTHE: The recommendation is that there be no provision similar to that contained in the present Article VIII, Section 5, that the school funds of the State be kept inviolate.

THE CHAIRMAN: Any question or objection to that conclusion of the Committee. If not, it is considered as approved. Next recommendation is on Page 7. Middle of the Page B. That the State Board of Education

and the office of State Superintendent of the Public Schools not be given constitutional recognition. Any question or debate or discussion. If not, that will be considered as approved. Recommendation Number C has already be acted upon.

MR. GENTRY: Mr. Chairman, on recommendation C, I would like to suggest there be no further debate, but I would like to call for a recount of a vote we took on this Section because I believe there have been some additional votes not counted previously.

THE CHAIRMAN: I don't see how there are votes that were not counted.

MR. GENTRY: One Member was out of the room when the vote was counted.

THE CHAIRMAN: Who?

MR. GENTRY: Mr. Mitchell.

THE CHAIRMAN: Under the rule we adopted previously, he could not vote on a reconsideration.

MR. GENTRY: Also Judge Walsh has expressed himself so strongly that his vote should be counted.

THE CHAIRMAN: We decided some time ago that we would not accept the votes of anyone who was not

present during the debate on the question and could not vote absentee persons. There are others who are not here today and might have contrary views, so I would have to rule your suggestion out of order. Is there any further recommendation, Mrs. Bothe? That is the end of it.

MRS. BOTHE: I think D has inferentially covered.

THE CHAIRMAN: D is on Page 12. Any further discussion or question? If not, it is considered as approved. Section E is on Page 14.

MRS. BOTHE: That may have been approved by the Commission at the July meeting. The subject was raised so that recommendation is that there be no reference to private aid to education in the Constitution. In the July meeting that recommendation as it now appears was discussed, and I believe the point was approved in principle by the Commission.

THE CHAIRMAN: Any further discussion?

Mr. Gentry?

MR. GENTRY: No motion on this point, but I

want to call the Commission's attention to the entire purport of Section E here for the reason if there is any belief among Commission Members that we have done anything which would preclude State aid to private institutions, we should take further action. I feel the entire action of the Committee was done toward the end that we should remain silent on the point of it, but not to prohibit State aid to private institutions.

THE CHAIRMAN: Any further comment or discussion? Anything further?

Dr. Bard?

DR. BARD: I felt Mrs. Freedlander's substitute provided for that if the State so desired it. That could be taken care of through the substitution motion which Mrs. Freedlander moved and which was subsequently passed, State aid for private institutions can be taken care of.

THE CHAIRMAN: Yes. Any further comment or discussion? If not, that concludes the consideration of the Fifth Report of the Committee on Miscellaneous Provisions.

MRS. BOTHE: Could you bear with us a brief moment?

MR. CLAGETT: Mr. Chairman, while the discussion is continuing, can we go back to Page 5 and run through A and D and put a Yes or No?

THE CHAIRMAN: As approved on Page 5. B, on Page 7 is approved.

MR. CLAGETT: Page 5, I am talking about.

THE CHAIRMAN: They are stated in the seriatim list rather than recommendations. They are repeated in the more positive form. B, on Page 7, that is approved, C was controlled by the vote on Section 3; D, on Page 12, was approved; E, on Page 14 was approved.

Mrs. Bothe?

MRS. BOTHE: Mr. Chairman, I don't know what the Commission's rules are with respect to this, but I believe the education report is still before you, and I would propose and I would hope we could take another vote without protracting debate, that Section 3, proposed Section 3 be amended to read as follows: The University of Maryland shall be managed by the Regents of the University of Maryland

in accordance with law and the Regents shall have exclusive general supervision of the institution. Deleting the words following, that the control of the expenditures of the institution's funds will be under the supervision of the institution.

MR. CASE: I will second.

THE CHAIRMAN: Mrs. Bothe, I would have to rule the motion out of order. At the time this was considered, I called for question of all amendments. Since then there is at least one or perhaps two Members of the Commission who have not participated in the previous debate or been present when it was heard. When that question arose in July and request was made for such a person to vote, the Commission determined that it should not grant the privilege to anyone who had not been present during the debate. I think in all fairness now that the same rule should apply.

MRS. BOTHE: I agree with you, Mr. Chairman, and the Members of the Commission or any Member not present for the debate should not be privileged to vote on the issue, but I am asking that a vote be taken by those

present for the discussion.

THE CHAIRMAN: I rule the motion out of order but permit you to appeal to the Commission. Do you want me to put it to a vote?

MR. SCANLAN: I would call attention to the fact that Mr. Hoff who voted in favor of the original motions is no longer in the room.

MR. CASE: What difference does that make?

THE CHAIRMAN: Just a moment, Mr. Scanlan has the floor.

MR. SCANLAN: If Mrs. Bothe succeeds in overruling the Chair, I would hope any vote would wait until Mr. Hoff can return.

MR. MILLER: Mr. Chairman, I think a point of order is well taken, and I don't believe that the Chair, if it so rules, that it ought to debate or anything else.

THE CHAIRMAN: I don't believe it is open to debate. The question arises on appeal.

JUDGE ADKINS: May I make a suggestion? It seems to me that this is a very critical matter. I voted with the majority, and I will vote with the majority

unless the minority can come up with a successful amendment. It should not be redecided on an 11 to 10 vote. I would say this matter be made a special matter of business at the next Commission meeting with the understanding that if the Committee wants to come back with a modified proposal not embodying the question of autonomy that the Commission will consider the proposal without debate.

THE CHAIRMAN: The matter pending is an appeal from a ruling by the Chair. Do you want to press it?

MRS. BOTHE: Would the Chair accept a suggestion that it be made a special order of business?

THE CHAIRMAN: Certainly, the Report is still before the Commission.

MRS. BOTHE: That would be agreeable to me.

MR. SCANLAN: Would you speak louder?

MRS. BOTHE: It would be agreeable if we followed Judge Adkins' suggestion. In view of the very close vote, I feel it should be done.

THE CHAIRMAN: Well then, the motion, as I understand it, is that the subject matter of Section 3 be referred back to the Committee with instructions to report to the next meeting of the Commission a redraft of the Section, and I didn't quite get your qualifying language.

JUDGE ADKINS: My qualifying language was that it would not involve the complete autonomy they have proposed here since that has been voted down.

THE CHAIRMAN: And this be made a special order of business at the next meeting.

DR. BARD: The question?

THE CHAIRMAN: Has that been seconded?

DR. JENKINS: I second it, and I understood him to say special order of business without debate. If that is permissible.

THE CHAIRMAN: Is that what you said, you mean, without debate now?

JUDGE ADKINS: I withdraw that portion of my

motion because I don't think this motion, if it is a new matter, it should not be without debate. I would be willing to limit the debate.

DR. BARD: I have a point of order. Would the maker of the motion be willing to put a period after, redraft of the provision?

JUDGE ADKINS: No.

DR. BARD: In other words, you are telling them how to redraft it according to your motion?

JUDGE ADKINS: I will stand on my motion.

THE CHAIRMAN: Any further discussion of the motion?

MRS. BOTHE: A point of information. Will everyone at that meeting be privileged to vote?

THE CHAIRMAN: At the next meeting, certainly. It will be a new matter before the Commission at that time. It will not be merely a reconsideration.

MR. MILLER: Will it be subject to a point of order if it goes right back to the beginning about putting the University of Maryland in the Constitution?

THE CHAIRMAN: It would involve, as I understand

it, the draft of a provision providing some form of autonomy for the University of Maryland, constitutional autonomy, something less than the absolute autonomy presently in Section 3.

JUDGE ADKINS: That is the substance. May I say by way of explanation that I asked during the course of the discussion if the Committee was interested in having some reference to the University of Maryland in the Constitution? Without going to the full extent of Section 3, their answer at that time was No, and in accordance with that answer, I voted for Mr. Scanlan's motion. I do not favor autonomy. If there is something less than full autonomy that can be helpful in the situation, I might be prepared to accept it. I do not think that that opportunity ought to be forclosed on an 11 to 10 vote.

THE CHAIRMAN: Any further discussion?

MR. MILLER: I approve of the principle, but why should we open the gates for some of the Members here that may feel strongly about this one way or another and may not be able to attend the next meeting; and we

are just throwing the gates open, and all we fought and bled and died over here this morning is going down the drain if a new proposition can be brought up. I would suggest we decide it right now.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: I would disagree with that, Mr. Chairman. I think it has been one of the great revelations and sources of pleasure to all who have participated in the meetings of this Commission from the beginning up until now, and now is not the end. We have been able to find common meeting grounds and to resolve many important issues in a way that was acceptable to all of us and to foreclose this particular issue as important as it is and as close as the vote is, I think would be a great mistake because there must be some common ground and one where we can all go out with a degree of satisfaction.

THE CHAIRMAN: Any further discussion of the motion? Ready for the question? The question arises on the motion to refer to the Committee on Miscellaneous Provisions reconsideration of Section 3 with the request

that the Committee submit at the next meeting of the Commission a redraft of Section 3 which provides for the University of Maryland something less than the complete autonomy provided by the present Section 3, and that this be made the special order of business at the next meeting of the Commission.

Ready for the Question? All those in favor, signify by saying Aye. Contrary, No. The Ayes seem to have it. The Ayes have it. Anything further, Mrs. Bothe?

MRS. BOTHE: I believe that covers our Report pending the next meeting.

(Whereupon the meeting adjourned, to reconvene following the luncheon recess.)

CONSTITUTIONAL CONVENTION COMMISSION

AFTERNOON SESSION

October 15, 1966

Holiday Inn, Baltimore, Maryland

Appearances as heretofore noted.

Reported by:
N. F. Swetland

THE CHAIRMAN: Can we get started, please? We now go ahead with the consideration of the Fifth Report of the Committee on Judiciary Department.

Mr. Martineau?

MR. MARTINEAU: As the answer to Mrs. Freedlander's question, the purpose of this report is primarily to tidy up the judiciary article that is presented in our Fourth Report and to include the changes which were directed by the Commission at our last meeting. Perhaps the most noteworthy aspect of the report is its brevity. We went from forty pages of comment to one page. The first page of the report indicates the procedure that we followed which was merely to reprint the article showing the changes in there in the same way as changes are shown in legislation, bills adopted by the Legislature, that is the new material is underscored and the deleted material is bracketed. I will run through the sections very quickly and whatever changes there are, I will explain. If there are any questions, just stop me as I go along.

There was no change in Section 1. Section 2A

just included the style change which was requested by, I believe, Dr. Burdette and we have agreed to refer to the jurisdiction rather than such jurisdiction as provided by law. Section 2B deletes the reference to the Chief Justice and merely refers to seven Justices and includes the change from four to five which would constitute a quorum.

This was directed by the Commission at the last meeting.

THE CHAIRMAN: Just a minute. Unless you have a question about a particular section, we will just continue right on. I will try to keep my eye around so if you have a question, just signify that you want to be recognized and I will stop him.

MR. MARTINEAU: Section 3A we made the same change with respect to the language. Section 3B, we made the same reference to the number of judges deleting the reference to the Chief Judge. We also added the word exclusively by rule. This, along with some other changes, made in the rule section were designed to avoid the difficulty that was raised by

Mr. Case at the last meeting of whether the provisions, the sections here that related to rule making would permit the Legislature to pass a law which would change the rule. We have attempted by the use of the word exclusively here and by the use of different language in the rule making section to make it clear which matters covered by rule are exclusively covered by rules of the Supreme Court and which can be modified by the Legislature.

THE CHAIRMAN: Mr. Martineau, before you leave that, this word which is used in four or five sections, I think, is a little awkward. Is there any objection from the point of view of substance or any other objection from your Committee if the Committee on Style is able to cover this problem in the section on rule and not repeat the exclusively four or five times.

MR. MARTINEAU: I wouldn't think there would be any objection whatsoever.

THE CHAIRMAN: All right.

MR. MARTINEAU: As a matter of fact, if any of you have suggestions as to rephrasing that might

express the thought here more clearly we would be happy to receive them. We have done and have almost consistently revised the language to make it more clear and if anyone has any suggestion, we would be happy to receive them. We have no objection to the Committee on Style making any changes they deem appropriate.

Going on to Section 4 the first reference to underscored there in all judicial proceedings was directed at the Commission at the last meeting and the deletion of the word all in the first line was also directed as was the addition of the word by this Constitution. The next changes are shall have, as is, is also a matter of cleaning up the language. In Section B, 4B, we have rephrased the language somewhat to make it clear that the judges are allocated among the counties by law. This was again a matter raised at the last meeting. Skipping on then to --

THE CHAIRMAN: May I ask a question here?

MR. MARTINEAU: Yes.

THE CHAIRMAN: It is not clear to me as this is rephrased what is meant by the phrase allocated among

the counties by law.

MR. MARTINEAU: Well, the phrase is that, it is intended to mean that the Legislature will provide that Baltimore County there shall be 13 Judges of the Superior Court. In Baltimore City, there shall be 20, and in some other county there will be 1, 2, or 3. That is the purpose.

THE CHAIRMAN: You mean simply the number allocated?

MR. MARTINEAU: Not the individual.

THE CHAIRMAN: What I was thinking was whether or not this would let the Legislature provide by for law,for instance, that there will be 7 Judges in Prince Georges County, 2 of whom should be elected from Charles County and one from St. Marys and one from Calvert and the rest from Prince Georges.

MR. MARTINEAU: I would not think so.

THE CHAIRMAN: That is not intended?

MR. MARTINEAU: Certainly not intended. We are trying to cover the residency requirements. Perhaps this does not express it very well.

THE CHAIRMAN: Do you need the phrase who shall be allocated among the counties by law at all, does it add anything? Mr. Rodowsky.

MR. RODOWSKY: I think you need something to tie in with the residency requirement further on particularly with the change that was dictated by the Commission that you have not only a residence as a condition of eligiblity for nomination and appointment, but this concept of a principal place of the practice of law and which creates the problem so that you need some concept whereby the particular office to be filled is tied to a particular one of the counties since I think the idea is --

THE CHAIRMAN: I take it you are saying the Legislature shall have the power to determine the number of Judges to be allocated to each county and that is all?

MR. RODOWSKY: And I think if we change the who to which, it might do it because it modifies number and not the person.

THE CHAIRMAN: All right.

MR. CLAGETT: How will that read? I read this to be just as you described it, seven Judges in Prince Georges County and two coming from outside the county or allocated to it.

THE CHAIRMAN: Well, since we have the intent clear now, can we leave the exact phraseology to the Committee?

MR. MARTINEAU: If there are no other questions on 4B, I will move on to 5A, which merely has the change ascribing the jurisdiction which was a stylistic change. For Section 5B, again it is merely a style change deleting the reference to the Chief Judge and Associate Judges and just saying the number of Judges provided by law. The last sentence added is merely to pick up the point which was taken out of the first sentence which was deleted, that is that there must be at least one District Court Judge resident in each district.

Section 4 -- excuse me, Section 5C, Commissioners. Again, these are merely stylistic changes. We have added the word exclusively to cover

the point I mentioned before. All of the other changes in there are merely stylistic to make it, the point we are trying to make clear, that is.

THE CHAIRMAN: May we go back to 5B. I have always been troubled by the third sentence, there shall be a division of the District Court for each district. Is it necessary at all? Can it be eliminated?

MR. MARTINEAU: If you don't say that, then the concept of dividing the court into different districts isn't included in here.

THE CHAIRMAN: You are not really dividing the court into districts, are you?

MR. MARTINEAU: You divide the court into divisions.

THE CHAIRMAN: Do you really want to? Don't you really want to have simply one statewide district court and for convenience you are having geographically a district rather than the county but otherwise the system is the same as for the Superior Court? I assume, for instance, that the style of the new court will be, for instance, the Superior Court of

the State of Maryland in and for Baltimore County.

MR. MARTINEAU: That's correct.

THE CHAIRMAN: Is there any reason why in the District Court it wouldn't be the District Court of the State of Maryland in and for the 7th District? Why a division?

MR. MARTINEAU: Well, this is a semantic problem that we got involved in with Judge Niles as a matter of fact. We must have debated this point for three months.

THE CHAIRMAN: No, you debated the question whether the word district or division. I don't mean that point. All I am saying is why do you need a division. I agree that division, if you need a division, the proper term is division, but why do you need a division? It is one statewide court.

MR. MARTINEAU: That's correct. But you are only going to have, you are going to have a branch of that court for a particular district.

THE CHAIRMAN: Just as you are going to have a branch of the Superior Court for every county?

MR. MARTINEAU: My reporter tells me the Chairman is right and between the two of them, I don't see how I can argue.

MR. SCANLAN: That illustrates our difficulty. Will you raise your voice so we can hear your conversation.

MR. MARTINEAU: My reporter tells me the Chairman is right and between the two of them, I don't see how I can carry the argument further.

MR. CLAGETT: Why don't you have a District Court, one District Court for two districts?

MR. MARTINEAU: Well, it is one District Court for the entire state actually.

MR. CLAGETT: Why can't you have a presiding division of that District Court for two districts?

THE CHAIRMAN: The whole purpose of a district is to have at least one Judge.

MR. CLAGETT: Well, it may be for the Commission, though, and administrative facilities somewhere.

THE CHAIRMAN: For purposes of the Court, it is so.

MR. CLAGETT: Where does it actually say that unless you keep this sentence in here?

THE CHAIRMAN: Let me state my understanding and then the Chairman of the Committee and reporter can correct me if I am wrong. The District Court, just as the Superior Court, is one statewide court. You have a provision that there shall be at least one Judge in every county. The District Court has the same concept. It is a statewide court. You cannot say there shall be at least one District Judge in every county because you have decided not to have that many. You have decided there must be one District Judge in every district which is something more than a county perhaps. The only purpose, as I understand it, of creating a district is to have a geographical unit that may be larger than a county so that the provision that you have only one resident Judge in each district.

MR. CLAGETT: I still can't grasp the concept that if you have a Judge, you have to have a court for him to sit in.

THE CHAIRMAN: You are talking about a court

room now?

MR. CLAGETT: Maybe that is what I am thinking of.

THE CHAIRMAN: There is one in every district.

MR. CLAGETT: Where does it say so unless you do say so?

MR. MARTINEAU: The last sentence says there shall be at least one District Court Judge resident in each district.

MR. CLAGETT: Where is his court room?

THE CHAIRMAN: Wherever the Legislature happens to fix it.

MR. CLAGETT: I find if you provide a District Court for each division, I have no difficulty with it, but there is a question.

MR. MARTINEAU: It really is. The two sentences to together, the second sentence merely explains the first sentence as to what you are establishing by the division of the court into districts. It really isn't necessary perhaps as an explanatory

matter and I think if we can delete a sentence out of here without interfering with the actual meaning of the Constitution, I think we better do it.

THE CHAIRMAN: My concern goes further than that. What bothers me is the notion that by creating a division, you seem to be at war with the idea of one statewide court.

MR. MARTINEAU: I see the problem and agree with your concern.

MR. CLAGETT: That had not occurred to me. When I read this, I went back and re-read the same sentence and I felt my mind satisfied that there was a Judge and there was a court and everything went along fine, but I will not object to it.

THE CHAIRMAN: Mr. Hargrove.

MR. HARGROVE: I think perhaps we could combine the three sentences because the state shall be divided by law into districts composed of one or more entire or continuous counties. I think we have three separate thoughts that can be combined. And it says which shall be located at the District Court.

THE CHAIRMAN: That could be a question for the Style Committee.

MR. MARTINEAU: Correct.

THE CHAIRMAN: I take it the Committee agrees to the deletion of the sentence?

MR. MARTINEAU: I don't know about the rest of the Committee.

THE CHAIRMAN: Is there any objection to the deletion of the sentence there shall be a division of the District Court for each district?

MR. MARTINEAU: We don't object.

THE CHAIRMAN: That will be out. Now go on to 6.

MR. MARTINEAU: I have already explained Section C. Section 6 is merely, it was Section 8 and has now been designated Section 6. Other than that, there is no change. Section 7, the one change here is in the, at the end of the third paragraph where we deleted the reference to the making of the budget. You have already approved a slightly different form in the Second Report of the Committee on Finance and Taxation.

THE CHAIRMAN: That means we delete the second sentence of the third paragraph, the one in brackets?

MR. MARTINEAU: The one in brackets. It has been deleted by the Committee because it is in brackets. There are no other changes in that section.

Section 8, the rule-making power, we again have attempted here and the changes in the language to make clear that the legislative authority overrules and only extends to the three specific types of rules mentioned in 1, 2, and 3, and that wherever else the word rule is used in the section or in the article rather, that it is exclusively by rule and that the Legislature has no authority over it. That is the only purpose of the changes in that section.

MRS. BOTHE: Mr. Chairman, I would like to make a comment on Section 7 because I recall yesterday that the Finance Committee provided that the Chief Judge of the Superior Court budget would not be subject to revision and the Committee on Style or whoever has coordinated this, I think the deletion of that division,

Section 7, that the Chief Judge of the Superior Court who prepares the budget ought to be tied in.

THE CHAIRMAN: I think it does tie in. This is in the Section 52 provision that was discussed yesterday. It says the budget for the Judiciary Department prepared by the Superior Court may be submitted.

MR. MARTINEAU: The Subsection 3 which is on Page 13 of the Finance Committee's report provides that the estimates of appropriation is for, and skipping to the judiciary, for the judiciary as required by law certified by the Chief Judge of the Superior Court shall be transmitted to the Governor in such form and in such manner as he shall direct and shall be included in the budget without revision. So they have picked up the idea as to who is preparing it. Of course, they have changed the concept of whether the budget is subject to revision by the executive or not. The results of what has been done, our original proposal was that the judiciary budget was subject to revision by the Legislature, not by the executive, the result of the action of the Commission in approving this report

is that the budget of the judiciary is now subject to revision by the executive but not by the Legislature. A further section that was adopted yesterday provides that the budget of the judiciary as submitted by the Governor can be increased by the Legislature but not decreased and that is the same provision that is in the present Constitution.

THE CHAIRMAN: Mr. Bond.

MR. BOND: Point of information, Mr. Chairman. Has this provision as to rule-making power been finally approved by this Committee?

THE CHAIRMAN: Wait just a second. You are on Section 8..

MRS. BOTHE: I am satisfied.

MR. CLAGETT: A question on Section 7. Is it possible that the Chief Justice could not assign the Chief Judge of the Superior Court the budget making responsibility that has to be submitted to the budget?

MR. MARTINEAU: Well, it is actually assigned to him by the section that I just read to you.

MR. CLAGETT: I didn't read that as assigning it to him.

THE CHAIRMAN: Certified by him.

MR. MARTINEAU: Obviously he is not going to prepare it individually. Some part of the administrative office of the court is going to have to prepare the budget. The individual Judge couldn't possibly do it.

MR. CLAGETT: My question is, is it possible that the Chief Justice in assigning the administrative responsibilities to the Chief Judge of the Superior Court should not give him anything that acquaints him and makes it a basis for him to certify.

MR. MARTINEAU: He is necessarily going to have to be familiar with the operation of the judicial system. He is the principal assistant to the Chief Justice and the administrator of the judicial system. I don't see how he cannot be familiar with it.

MR. CLAGETT: That as a practicality is certainly true but there is a loophole there. There is a possibility he may be sent off to St. Marys County and

kept busy down there in some responsibility.

MR. MARTINEAU: There is no reason for that, Hal, because the Chief Judge of the Superior Court is appointed and serves at the pleasure of the Chief Justice. If you are talking about a man with whom the Chief Justice doesn't get along and wants to exile him, he doesn't have to exile him, he can appoint somebody else Chief Judge.

THE CHAIRMAN: Any further question on Section 7? If not, Mr. Bond, you have a question on Section 8.

MR. BOND: Has the substance of this section been approved by the Commission on prior meetings?

MR. MARTINEAU: Yes.

MR. BOND: I move its reconsideration.

THE CHAIRMAN: Is there a second?

MR. MITCHELL: Second.

THE CHAIRMAN: What's the point you want to reconsider, Mr. Bond?

MR. BOND: Only that I feel that if the Legislature and the people speak in response to something that they see in the administration of the court and I

think the words governing practice and procedure is pretty broad. Certainly the Legislature --

THE CHAIRMAN: Wait, go ahead. Don't discuss it, give the point.

MR. BOND: The point I am making is that the Legislature speaks and the court should not be able to overrule the Legislature.

THE CHAIRMAN: The question is submitted to the Commission without debate under our rule as to whether or not you want to reconsider. This is a question which the Commission has acted on in opposite directions in two successive meetings. Are you ready for the question?

DR. BURDETTE: I can't hear. What are we reconsidering?

THE CHAIRMAN: The question that Mr. Bond wants to reconsider is whether in the final analysis the decision of the Legislature or the decision of the court is to be paramount on the matters set out in Section 8 covered by the rule-making power. This was discussed in July. It was voted on in August. It was

voted on in September. You ready for the question? All those in favor of reconsidering the decision at the last meeting, please signify by a show of hands. Contrary? The motion is lost, four to thirteen. Any further questions as to Section 8? Mr. Scanlan.

MR. SCANLAN: Until Tuesday of this week I would have thought the language of this rule perfectly clear. I am referring to the last three sentences which say the rule, if adopted or readopted after the enactment of the statutory provision, shall be paramount over the prior statutory provision to the extent of conflict. Tuesday of this week I had precisely that case in the Court of Appeals. We had on the one hand Rule 605 which governs appeals in multi-claim cases. And shorthand says unless everything is decided and the Judge certifies to the contrary there is no final order until all the claims are decided. On the other hand, we had Article 5, Section 2 of the statute which says that among the interlocutory orders that are appealable is a refusal of an injunction. I argued that the rules having been in effect adopted

subsequent to the original enactment of the legislation making interlocutory appeals should prevail. The Court of Appeals ruled against me on the grounds the statute had been codified in 1957 subsequent to the adoption of the rule and therefore, to make it perfectly clear, I would suggest the following stylistic change. The rule, if adopted or readopted after the enactment or re-enactment of the statutory provision shall be paramount. In other words, the statutory provision could be enacted. A rule could be adopted and then a codification. It is arguable whether a codification is another enactment. I guess I am nit picking about this but it is rather close to my heart.

THE CHAIRMAN: Any comment? Mr. Martineau.

MR. MARTINEAU: I just at first blush, Al, I think we don't want you to lose any more cases like that.

MR. SCANLAN: That is what I had in mind.

MR. MARTINEAU: I think as a matter of clarification it probably -- well, the word enactment would be -- I don't know that would add anything. The

word enactment, if you interpret that to mean codification, then in either case you are going to have to have a readoption of the rule to have a superior to the enactment.

MR. SCANLAN: If it is clear in the Committee's mind that enactment means the last time the Legislature did something that continued that in effect as law, then it is clear.

MR. MARTINEAU: There is no rule on that. It is unfortunate you had to lose a case to clarify it.

MR. SCANLAN: I am glad I saved you some amending.

MR. CLAGETT: I don't know a high school student reading this would know what the law said.

MR. MARTINEAU: I think that is why we have annotated rules.

THE CHAIRMAN: Go ahead.

MR. MARTINEAU: Moving on then, I hope, to Section 9, we have stated here a number of alternatoes or alternatives, I am not sure which, which we were directed to include so as to have all of the possible

alternatives with respect to the type of residency requirement that you might have. Now Section No. 1 which is the one that was adopted by the Commission at the last meeting, in effect, states that for the Supreme Court and the Appellate Court you have to reside in the appellate judicial circuit created for that court. For the Superior Court, you can either reside in or have your principal office for the practice of law in the county for which the vacancy exists and for the District Court you must reside in the district. That was voted and approved by the Commission at the last meeting. Alternate No. 2 has elimination of the appellate judicial circuit for the Supreme Court and the Appellate Court. In other words, permitting the Judges of those courts to come from any place in the state. It also includes the provision for the Superior Court that a person can either be a resident of or have his prinicpal office for the practice of law in the county for which the vacancy exists and he must also then, with respect to the District Court, reside in the district. Alternate 3 is the original proposal

contained in our Fourth Report, that is that you must be a resident of either the appellate judicial circuit, the county, or district for which the vacancy is and there is no provision for having your principal office for the practice of law. That was as proposed in our Fourth Report. The Commission amended it with respect to the Superior Court to provide for the eligibility of a person who has his principal office for the practice of law in a county where the vacancy exists. Then No. 4 applies the idea of qualifying a person to sit on the Supreme Court and Appellate Court where he either resides or has his principal office for the practice of law. That is extending the idea applied by this Commission to the Superior Court to the Supreme Court and Appellate Court.

THE CHAIRMAN: Any questions?

MR. SAYRE: Is there a motion?

MR. CLAGETT: I have the idea but I have lost the specifics.

JUDGE ADKINS: Didn't we vote on all these questions at the last meeting?

THE CHAIRMAN: These are all voted and recommitted to the Committee to make the changes. They are just reporting on the changes made.

JUDGE ADKINS: Why are we faced with four alternatives?

THE CHAIRMAN: Because the Committee decided to submit the alternatives to the Convention in the report.

MR. MARTINEAU: The Committee didn't decide that. The Commission instructed us to.

THE CHAIRMAN: The Commission made that determination. Section b.

MR. SAYRE: Which is in force?

MR. MARTINEAU: The very first one. It was adopted by the Commission.

MR. CLAGETT: I move its adoption.

THE CHAIRMAN: It already has been done.

MR. SAYRE: Is reconsideration in order or proper from your viewpoint?

THE CHAIRMAN: Anybody wants to move it under our rules they can. I think we discussed it at

great length and ended up with the resolution the way it is.

MR. SAYRE: I move reconsideration for the consideration of alternate No. 2.

THE CHAIRMAN: Is there a second? The motion dies for lack of a second. Section B.

MR. MARTINEAU: The only change in B is changing the phrase the office of Judge to a judicial office because that is the phrase used in Section a and the only reason for that change. Section C1, we have only added the word in the last sentence. It doesn't add anything to it and the same thing in Section C2, in C3, we have added the word exclusively to clear up the matter that I discussed before. In Section 4, the term in the second sentence we are changing the word chosen to appointed to be consistent with the other language in the section. In 5, we have added the word state or local in compliance with the request at the last meeting of the Commission to make it clear that we are not talking about a federal office or some other office that is not included within the words state or

local. Section 10 the term has been reduced from 14 to 10 in accordance with the vote at the last meeting of the Commission. In the next sentence the words, the word throughout has been changed to of the entire state referring to the electorate just because we thought it was clearer than the word throughout. The rest of the language in there is again merely trying to make it clear we did change where the Judge must stand for election or re-election to changing it from where he was required to reside when appointed to the county or district for which the office then exists. We had to take out the word required to reside because of the change in the language adopted by the Commission making him eligible to be appointed in a county where he doesn't reside. The word exclusively has again been added to clarify the rule-making power.

Moving to 11, there have been no changes.

MR. DELLA: Mr. Chairman, just one point, I would like the record to show at least that I have no objection to Section 10 except that noncompetitive election.

THE CHAIRMAN: I think the record is already clear on that, Mr. Della.

MR. MARTINEAU: Moving on to Section 12, I would like to read to you some changes in the language that the Committee has thought would be better and the principal purpose of the change in the language is to include pensions in the compensation which cannot be reduced. It was brought to our attention by the Supreme Bench that they felt that if you are going to give the Judges the protection of not reducing their compensation, the same principle should apply to not reducing their pensions and the Committee considered this and thought that it was, that it should be included in here. So I will read the language as I think it should be, as the Committee has agreed Section 12 should be.

It will start out,each Judge shall be, and then insert the word paid and then the next word will be compensation rather than compensated, each Judge shall be paid compensation for his judicial service solely by the state. Then the next sentence is the same except beginning with the words during his continuance

in office, or that phrase would be deleted and the sentence will read merely the compensation of a Judge shall not be reduced -- period. We are deleting the rest of that sentence.

THE CHAIRMAN: Say that again.

MR. MARTINEAU: The compensation of a Judge shall not be reduced. We are deleting the words during his continuance in office.

THE CHAIRMAN: Can you tell us the reason for that?

MR. MARTINEAU: Yes, if we are going to put in here as we are suggesting that you can't reduce the pension he is no longer in office when he is retired and you reduce his pension after he is off the Bench. We want to prevent that.

JUDGE ADKINS: May I ask a question?

THE CHAIRMAN: Judge Adkins.

JUDGE ADKINS: If this Constitution is adopted, is the net effect of it to say that all Judges must be paid the highest salary which any Judge is now receiving from all sources?

MR. MARTINEAU: Let me read on. Let me finish reading the entire section that we propose and that may answer some of the questions you might have. We then delete the entire next sentence relating to pensions.

MRS. FREEDLANDER: Which sentence?

MR. MARTINEAU: Provision shall be made by law for pension based on length of service of Judges and their surviving spouses, delete that. Beginning at the bottom of page 10, the last sentence at the bottom of Page 10 going over to the top of Page 11.

MR. MILLER: What did you delete?

MR. MARTINEAU: The sentence beginning at the bottom of Page 10 beginning with the words provision shall be made by law for the payment of pensions based on length of service to Judges and their surviving spouses. We are deleting that. In the next sentence beginning with the words the same compensation we are deleting the phrase including pensions. In other words, the 4th and 5th words in the first sentence on Page 11 are deleted, the words including pensions. Then at

the end of that section we are including the following phrase, or the following sentence rather.

Compensation means salary during continuance in office and pensions based on length of service payable to a retired Judge and his surviving spouse. Now let me read it. The section 12 as rephrased the Committee recommendation for Section 12 is as follows:

Each Judge shall be paid compensation for his judicial service solely by the state. The compensation of a Judge shall not be reduced. The same compensation shall be paid to all Judges of the same court except that the same reduction in compensation of the Judges of the same court may be made applicable to all Judges thereof appointed after the effective date of the reduction. Compensation means salary during continuance in office and pension based on length of service payable to a retired Judge and his surviving spouse.

MR. MINDEL: And or is it or?

THE CHAIRMAN: He said and, salary during office and pension after.

MR. MINDEL: Retired Judge and/or his wife.

MR. MARTINEAU: That is what we mean but we don't want to put that language in here.

DR. BARD: Do you need his? It could be hers. Why not knock out hers.

THE CHAIRMAN: Wait a minute, we are not getting a record. The suggestion is you eliminate his before her.

DR. BARD: Yes, knock that out.

THE CHAIRMAN: Leave that to the Committee on Style.

MR. CLAGETT: You don't want it.

MR. MILLER: It starts out except that the same reduction. Without it be any reduction or a reduction. There has been no reduction talked about before, has there?

MR. MARTINEAU: We provided that.

THE CHAIRMAN: No, he is right.

MR. MARTINEAU: The compensation of a Judge shall not be reduced.

THE CHAIRMAN: He is talking about the added

language at the top of Page 11.

MR. MARTINEAU: When we say the same reduction.

THE CHAIRMAN: He means a reduction on a uniform basis.

MR. MARTINEAU: We mean a uniform reduction.

THE CHAIRMAN: Can you leave that to the Committee on Style?

MR. MILLER: Certainly. It just reads awkward.

THE CHAIRMAN: It is awkward. Mr. Martineau, I have some difficulties with several provisions. No. 1, it just occurred to me,and it never hit me before, but wouldn't the second sentence of this paragraph either in its original form or as revised be in conflict with the last sentence of Section 13? Don't we need a cross reference? That is the provision that permits the continuance of a pension at a reduced rate to a removed Judge.

MR. MARTINEAU: Yes.

MRS. FREEDLANDER: Except as otherwise

provided.

MR. RODOWSKY: The compensation in revised language modifies Judge by the word retired.

THE CHAIRMAN: That is my second question. Where does that leave the removed Judge with respect to the definition.

MR. RODOWSKY: It would leave him under Section 13 and whatever the order of removal provided.

THE CHAIRMAN: Perhaps so. My other question has to do with that last language. You use the phrase pension based on length of service and by definition that is compensation and by the second sentence that is what shall not be reduced.

MR. MARTINEAU: That's correct.

THE CHAIRMAN: Does that permit the Legislature to provide a pension based on something other than length of service and not be subject to this prohibition against reduction?

MR. MARTINEAU: I think the only compensation he can receive is what is defined in here under the term compensation which is a pension based on length of

service. He can't receive anything else.

THE CHAIRMAN: Do you think it says that?

MR. MARTINEAU: Well, the last paragraph says that no Judge can receive anything except as provided herein, the remuneration provided herein for his judicial service.

THE CHAIRMAN: What is the reason for saying a pension must be one based on length of service?

MR. MARTINEAU: Well, we are trying to avoid the problem of the requirement that compensation be equal. In other words,the Judge who has served, if you didn't have based on length of service, this was at the last meeting of the Commission and you had the requirement for equality the man who served one year would be entitled to the same pension as the man who served twenty years and we want to avoid that.

MR. SCANLAN: I think I had the same problem you did, Mr. Chairman. My question is suppose the Legislature passed a law which increased the pension of all retired Judges by $5000 annually. Would this language prohibit the Legislature from doing that?

MR. MARTINEAU: No, what they would do, it seems to me, is to change the payment for length of service. In other words, they wouldn't arbitrarily say $5000. They would say each Judge shall receive so much for each year of service and that is how they would increase it.

MR. SCANLAN: In other words, any pension awarded to retired Judges would have some relation to length of service?

MR. MARTINEAU: Yes.

THE CHAIRMAN: Mr. Miller.

MR. MILLER: There may be something else in here but it occurs to me the way this is worded it says no Judge shall engage in the practice of law.

THE CHAIRMAN: We'll wait before you get to that paragraph. Let's see if there are any more questions as to the first paragraph.

MR. MARTINEAU: Want me to answer your question? Our idea is --

THE CHAIRMAN: The record is not going to show what question you are answering.

JUDGE ADKINS: I have already asked it. Is it the effect of this provision to require all Judges to be paid at the highest rate at which any Judge is being paid from all sources? I read it to say that it will. In other words, the Judges who have just been supplemented to the extent of $30,000 in Prince Georges County.

MR. CLAGETT: Let's get that straight, it is Montgomery County and it has been reduced.

MR. SCANLAN: And they are still overpaying them.

JUDGE ADKINS: If Montgomery County should elect hereafter to pay its Judges $30,000 a year by supplement prior to the adoption of this Constitution, I read this as saying that that compensation would be the amount required to be paid to all Judges since no Judge's salary can be reduced and since all Judges must be paid equal. Now there is no reference here to the fact that this means compensation from state sources. My query is am I wrong.

THE CHAIRMAN: Wrong.

MR. MARTINEAU: We are not covering that.

JUDGE ADKINS: Why?

MR. MARTINEAU: We are not covering that situation. That is going to have to be covered in the schedule. In other words, we are not freezing anybody in.

THE CHAIRMAN: I think you better tell him first that the reason his statement wouldn't be correct is that the Constitition will die with the adoption of the new one so all protection on existing salaries is gone.

JUDGE ADKINS: That is not my point, Mr. Chairman. Immediately after the adoption.

MR. MARTINEAU: Immediately after the adoption the Legislature will have to pass a law to say what the Judges will see.

JUDGE ADKINS: Immediately after the adoption of the new Constitution.

THE CHAIRMAN: All protection for Judges' salaries is gone and it is not possible to have any supplementation.

JUDGE ADKINS: Can you repeal an existing constitutional protection which is now held and reduce that constitutional protection?

THE CHAIRMAN: People are supreme, I think.

MR. MILLER: I think it would apply. I don't like to disagree with your legal interpretation but I think under the Constitution of the United States they wouldn't be able to reduce the salary of a city judge until his term had run out.

MR. MARTINEAU: I have yet to hear of any application of the contract clause to a salary payable by a state to a public official.

DR. BURDETTE: If it was established by contract it would.

MR. MARTINEAU: It is not established by contract. It is established by law.

THE CHAIRMAN: Let me cut across with this statement. Whether that is or is not the law, the Commission, I am quite sure, is not going to recommend a continuance of the situation which would have that effect and we requested the Committee, therefore, to

study the question of how best to provide for the protection of the existing salary and that is what Mr. Martineau was about to comment on. Go ahead, Mr. Martineau.

MR. MARTINEAU: The comment I was about to make was that we are going to have to provide in the schedule for the continuance of the salary of the present -- first of all we are going to have to provide for the continuation in office of the present Judges. I don't think anybody would claim that even though the Constitution may be repealed that those people still have a right to continue in office based upon some theory of contract. But nonetheless --

DR. BURDETTE: I would argue that. I would make a comment that they could be discontinued but would still have to be paid.

MR. SCANLAN: You went Webster one better.

(Laughter)

MR. MARTINEAU: Nonetheless, going one better, first of all, as I say, we are going to have to provide for the continuation in office of the Judges and

then going to have to provide what salaries these Judges are going to receive and the Committee has not made any decision on this. We are going to have to decide whether those Judges who are in office and who went on the Bench with the idea of receiving a particular amount of money that was not able to be reduced are going to be frozen in at that salary level. I don't know frankly what the Committee is going to recommend on this. My own inclination would be that any Judge who is on the Bench right now receiving a salary of a particular amount of money should be entitled to receive that as long as he remains in office. Of course, any Judge coming on after the adoption of the new Constitution will receive the salary which is set by the Legislature. This will be something that the Commission can vote on at a later time when it considers the schedule that we will propose.

THE CHAIRMAN: Next meeting.

MR. MILLER: You said as long as he is in office or until his term expires.

MR. MARTINEAU: During his continuance in

office.

MR. MILLER: Or his re-election.

MR. MARTINEAU: My own inclination would be that it should apply as long as he continues in office. I think the idea of the Judge's term expiring really is not a valid one. Under the concept we have in this, he really is in office until he is retired or he is booted out by the electorate and the function of the term which is ten years is not really that his term expires but that really he must go before the electorate each ten years to be continued in office. This is my own personal view of it.

MR. MILLER: I was thinking under the present Constitution that the present Judges, I don't think we would owe them obligation to a salary if it was in excess of what the new Constitution called for after the term for which they were elected has expired.

THE CHAIRMAN: That's part of the very thorny problem the Committee has to wrestle with. Mr. Della.

MR. DELLA: Mr. Martineau, the unions have

done the same thing. They have an evaluator come into the plant and find the salary is way up over what it should be and they sort of red circle it. When the man leaves the job, the new man gets the new rate.

MR. MARTINEAU: I think the Judges'union will insist upon this.

MR. GENTRY: I move the adoption of Section 12 as revised by the Committee.

THE CHAIRMAN: Under our practice, you don't have to move the adoption. We have another paragraph.

MR. MILLER: This last paragraph disturbs me in some respects. It would seem to indicate it was not something somewhere else. For instance, one of our very distinguished members of this organization might be disqualified from practicing law because he had once been a Judge. Is that what this means?

MR. MARTINEAU: No. If a man is no longer in office, he is no longer a Judge. This prohibition applies only to Judges obviously.

MR. MILLER: Is that all it is?

MR. MARTINEAU: That is certainly our

intention. I don't know how else we could state it more clearly.

DR. BURDETTE: The way to do that is say in office because somebody is going to argue a retired Judge is still a Judge.

THE CHAIRMAN: Particularly in view of the provision for recalling retired Judges.

MR. DELLA: Couldn't you have no Judge while in office?

MR.MARTINEAU: Couldn't your Committee take that into consideration?

MR. MARTINEAU: Yes, sir.

JUDGE ADKINS: I think the pension law would probably make it exactly. I think that is how it would be handled rather than putting the prohibition in the Constitution, that the law establish the pension fund and would provide it would cease upon the retired Judge engaging in any prohibitive activity.

JUDGE ADKINS: You can't do that because you have given him a constitutional guarantee that their pension won't be reduced so you have to put it in here.

The Legislature could not pass a law, I suggest, providing that they would forget their pension in the event that they went back to the active practice of law after retirement because they have a constitutional guarantee of their pension which you cannot violate.

MR. MARTINEAU: My own personal view would be that the Legislature in carrying out its function of providing pensions can put certain limitations on it and it may be that a man not be engaged in any action on behalf of an alien government or engaged in treasonable activities and many other sorts of things that could be a disqualification, perhaps the conviction of a felony could be a disqualification. I don't think this would prohibit the Legislature from doing that.

JUDGE ADKINS: I think this is a very serious question.

THE CHAIRMAN: I would incline to agree there is a question in view of your new definition that compensation means pension paid to a retired Judge, a pension based on length of service. This would almost seem to exclude any other consideration than length of

service.

MR. MARTINEAU: Well, I don't know whether the words added in there as provided by law would help that or not.

JUDGE ADKINS: Why not just add the language no Judge during his service or during the time when he is receiving state retirement, words to that effect.

MR. MARTINEAU: I would have no objection to that.

JUDGE ADKINS: That would clarify it.

THE CHAIRMAN: What is the suggested language?

JUDGE ADKINS: Well, I amperfectly willing to leave the language to the Committee, simply modify the term Judge by specifying during the period of his tenure in office or during the period in which he is drawing retirement shall not engage in the practice of law.

DR. BURDETTE: Why do you want to put retirement?

THE CHAIRMAN: I assume the purpose is to provide that the Judge receiving pension as a retired Judge shall not engage in the practice of law.

DR. BURDETTE: But there are so many other things he can't do. He couldn't even serve as a campaign manager for your campaign for Governor and I don't think that should be in there, but his retirement.

JUDGE ADKINS: It is well engaged in the state now and has been for twenty years and I would hate to see it changed by what amounts to inadvertance at this meeting. This has been a very controversial matter.

DR. BURDETTE: Retired Judges must be political units.

JUDGE ADKINS: We don't want the retired Judges subsidized by the state if you want to put it that way.

MR. MILLER: In that connection, Dale, if a Judge, as some of them do, retire at a young age and practice law, is their pension automatically ceased while they are practicing law or if, as they grow older,

they decide not to practice law, could they then draw their pension? I think a great many of the Federal pensions are based -- you can't draw the pension while you are doing something but you don't lose the pension just because you have done something.

THE CHAIRMAN: I take it,Judge Adkins, it is the former that you have in mind in suggesting the change, namely that the introduction of these various practices is only mildly mention as being accepted.

JUDGE ADKINS: I would like to have it written as the statute now provides and I am not clear of the statute at the moment.

THE CHAIRMAN: You mean the statewide statute, not the Baltimore City statute?

JUDGE ADKINS: The present statewide statute on retirement of Judges. I think the substance if we are going to provide pensions is as a constitutional protection, I personally have a serious caveat in my thinking to that whole concept, but if we are going to do that, we should restrict it to the concept as provided in the statewide statute on pensions for Judges and I

am willing to leave it to the Committee to do that.

DR. BURDETTE: How in the world, I guess it is the practice in the State of Maryland, Judge Gray has served as a Citizens Committee to get something done for the citizens of Maryland.

JUDGE ADKINS: Judge Gray receives the same compensation as you do for this.

DR. BURDETTE: Hold no office in a political party or organization.

JUDGE ADKINS: You are talking about a different section.

DR. BURDETTE: Can a retired Judge get out on a Citizens Committee and try to get a referendum adopted?

MR. MARTINEAU: I would think so.

DR. BURDETTE: I think he should be permitted to.

MR. SAYRE: On this point could we request that the Committee draft on this one point a position as to whether a person forfeits his pension if he practices law or if it is merely suspended while

practicing law.

MR. MARTINEAU: I think the Commission can give its answer right now. Are you in favor of forfeited?

MRS. BOTHE: I had this arise with Judge Adkins before. I am a little querulous about whether it is so necessary to grant constitutional protection to pensions. I am sure they will be perpetuated statutorially and these problems of when the pension can be cut off and under what circumstances the wife can receive it or a Judge has been removed may have it are all going to be litigation breeders in the Constitution and I am wondering whether we couldn't just forget all the reference to constitutional reference to pensions.

THE CHAIRMAN: Mr. Sayre.

MRS. BOTHE: As a member of the Committee, I would not make a motion.

THE CHAIRMAN: May I ask the Committee this and maybe it will help bring this matter to a head. Is there any strong feeling that the provision in the Constitution insofar as pensions is concerned should be

compulsory rather than permissive if you provide for permissive pensions but then provide that once granted, they cannot be reduced?

MR. MARTINEAU: Well, I can't speak for anybody else, but my own feeling is pensions should be compulsory, once granted they could not be reduced. I think we had agreed that the proposal, as I read it, includes those two concepts and I thought it was the recommendation of the Committee.

MRS. BOTHE: It was.

THE CHAIRMAN: Mr. Clagett.

MR. CLAGETT: I was thinking that the Federal practice of suspending the receipt of the benefits of the pension during the practice would be the best way of handling it but certainly not denying it permanently. Take Judge McWilliams' situation. He went on the Bench and was a Judge and then he developed a family of eleven children or so and he came off the Bench, in order to educate those children and after he had successfully accomplished that job in the practice of law, he went back on the Bench. Now ultimately he

will retire again without the same problem, I would assume.

MR. SCANLAN: The moral of that story is he should have spent more time on the Bench.

(Laughter.)

MR. CLAGETT: I would ask the Committee to consider the benefits while practicing.

MR. MARTINEAU: There is no feeling that there should be absolute forfeiture and unless someone suggests it and moves it, we are talking about something that is not a problem.

MR. CLAGETT: If it is no problem, I don't want to talk about it.

THE CHAIRMAN: Mr. Miller.

MR. MILLER: The only thought I have is I would hate to see our new Constitution make it necessary for Judge Adkins to retire from the practice of law. We need him in that capacity down in Easton and I hate to have it constitutionally impossible.

MR. MARTINEAU: There won't be any requirement of frofeiture unless somebody insists upon it.

THE CHAIRMAN: Even more than that implicit in Mr. Miller's question there is no intention that the Judge, once a Judge, is thereafter forever prohibited from practicing law.

MR. MARTINEAU: No.

THE CHAIRMAN: Dr. Burdette.

DR. BURDETTE: I want to provide a layman's chuckle to a friend of mine that lawyers are not thinking that Judges on the bench are not practicing law. I don't think in the private practice of law I want to know what they are doing if they are not practicing.

MR. CLAGETT: Administering the law.

MRS. BOTHE: I think I am correct that the present Constitution prohibits a reduction of salary but makes no mention of pension and if I am correct that situation has worked very well.

THE CHAIRMAN: Does the present Constitution say salary or compensation?

MRS. BOTHE: I was looking for the provision.

GOVERNOR LANE: I think --

DR. BARD: Mr. Martineau, could a Judge

become a city solicitor?

MR. MARTINEAU: He could but he couldn't get a pension.

DR. BARD: I am just wondering how that would work in Baltimore County.

THE CHAIRMAN: The Constitution now says nor shall the salary or compensation of any public officer be increased or diminished during the term of office.

MR. MARTINEAU: There is an exception to that for the judiciary some place.

MR. BROOKS: It came in as an amendment to the Constitution.

THE CHAIRMAN: The amendment is 35A, nothing in the Constitution shall exempt the salary or compensation of any Judge --

MR. MARTINEAU: Permitting the raising of the salary of the Judge during the term of office. There is an amendment to permit that.

MR. HAILE: Article 4, Section 24.

THE CHAIRMAN: Article 4, 24?

MR. HAILE: Yes, sir. It says salary shall not be reduced.

THE CHAIRMAN: This says salary of each Chief Judge and each Judge of the Circuit Court shall not be diminished during his continuance in office.

MRS. BOTHE: That is salaries.

THE CHAIRMAN: That was the amendment in 1956.

MR. MARTINEAU: The Committee's recommendation which I just presented was that the pensions be included in the protection that they shall not be reduced. I suppose -- well, that will be adopted unless someone makes a motion to the contrary.

THE CHAIRMAN: Mr. Gentry, in view of the considerable discussion, perhaps we ought to have a motion with respect to Section 12. Do you care to make it?

MR. GENTRY: I move the adoption of Section 12 as submitted to get it on the floor.

THE CHAIRMAN: As submitted subject to the matter to be reconsidered by the Committee.

MR. GENTRY: Yes.

MRS. FREEDLANDER: I second it.

MR.BOND: Does the motion include Judge Adkins' suggestion after the word Judge on the first line of the last paragraph, it will be some language during his tenure or retirement.

THE CHAIRMAN: It would.

JUDGE ADKINS: Am I out of order, Mr. Chairman, in making an amendment to that motion that it be approved subject to the elimination of the guarantee of constutitional guarantee for pensions?

THE CHAIRMAN: In other words, it permits pensions be permissive and not compulsory. You accept it, Mr. Gentry?

MR. GENTRY: Yes.

THE CHAIRMAN: The motion, therefore, would be that the principles set forth in Section 12 as amended by Mr. Martineau as he announced with the further change by the addition of the language suggested by Judge Adkins after the words no Judge in the second paragraph, and with a further change that the provision

for pensions be permissive and not mandatory be approved. Mr. Della.

MR. DELLA: Would this take care of the problem of a Judge coming off the Bench and then going into the practice of law where he wouldn't receive his pension while practicing law?

THE CHAIRMAN: Yes.

MR. DELLA: The way it is written now it is like a contract, it would be regardless of what he wanted to do, the Constitution says he is entitled to a pension.

THE CHAIRMAN: If the motion were carried out, the provisions in the pension law would have affect whatever they might be. Any discussion of the motion?

MR. BROOKS: One question, on that first change, paid compensation that doesn't really make any difference.

MR. MARTINEAU: No.

MR. BROOKS: It looks like that kind of thing though, still be free for the Style Committee to

work on even though you are making a change?

THE CHAIRMAN: Oh, yes. Any further discussion?

MR. MARTINEAU: May I comment on that?

THE CHAIRMAN: Yes.

MR. MARTINEAU: The effect of the motion would be to change the Committee's recommendation that pensions be given the constitutional protection. I believe that discussion is that the Committee had on this very briefly, based upon the recommendations of the Supreme Bench that this is an important feature that it may be that the Legislature could in some way attempt to influence the judiciary by raising or lowering their pensions and this would, to a certain extent, be the same evil that could result from the Legislature lowering the salaries of the Judges while they are in office. You have put in the prohibition against lowering the salaries. It seems to me that the very same principle should apply to the lowering of pensions. If you are trying to protect the judiciary from any financial loss because of a decision that a member of the judiciary would make, the very same principles apply to pensions

as well as to salaries. As a matter of fact, a Judge who is getting near to retirement it may be even more important. For that reason I would hope the motion would fail.

THE CHAIRMAN: Mr. Gentry, would you consider amending your motion so as to provide that although pensions, the system of pensions would be permissive and not compulsory that nevertheless the Constitution should provide that once granted, they should not be reduced.

MR. GENTRY: You mean once a Judge would start on pension, it could never be eliminated?

THE CHAIRMAN: That's right.

MR. GENTRY: No.

MR. SAYRE: Except when in the practice of law.

THE CHAIRMAN: Any further discussion?

MR. CLAGETT: Except when he was practicing law or while he was practicing law.

MR. GENTRY: It could be.

THE CHAIRMAN: I didn't mean that. I mean

simply the Legislature could not provide a system of pensions for Judges in one session and then at the next session cut them in half. I am not talking about the elimination of the restriction on practice of law while receiving the pension.

MR. GENTRY: It can be worded that way, yes, I would agree to that.

THE CHAIRMAN: Judge Adkins, would that meet your point?

JUDGE ADKINS: So long as it is completely permissive.

THE CHAIRMAN: Permissive except that once adopted, it could not then be reduced except for reasons like the practice of law. Would that meet your point, Mr. Martineau?

MR. MARTINEAU: No, it would not.

THE CHAIRMAN: I understood it would not meet your whole objection. Would it meet your last point?

MR. MARTINEAU: It would meet that narrow point but that, of course, is meeting the minor point,

doesn't avoid the major problem. We still would insist that the requirement be included, that pensions be given as well as salary.

THE CHAIRMAN: I don't think you have stated in the record the reasons why you feel it is imperative that pensions be provided.

MR. MARTINEAU: No, the matter hasn't been up for discussion. The Commission at the last meeting included,adopted the principle that pensions be required for Judges. It seems to me that the reason for it would be the same reasons we were giving the other protections to the judiciary. We want to get on the Bench the best qualified persons. This is not going to happen if we do not have a pension system. Judges must under this Constitution retire at age seventy. I think you are seriously interfering with the obtaining of the highest type of judicial caliber if there was no guarantee that the Judges be given pensions. Maybe I am talking about a problem that is not going to exist because everybody else gets a pension and I suppose it is virtually impossible to conceive of the Legislature

not granting pensions to the Judges as well as to everybody else. But I still would prefer the requirement be in the Constitution.

THE CHAIRMAN: Mr. Gentry.

MR. GENTRY: I think we look at it as a pension system, perhaps use the word pension system in here, I would have no quarrel with that. But Mr. Martineau keeps talking in terms of a Judge's pension being reduced. I would be against a Judge's pension being reduced also but perhaps if we switch over to a pension system instead of pensions for the Judges.

THE CHAIRMAN: Any further discussion? Are you ready for the question? The question arises on the motion to approve Section 12 as modified by the Committee and announced by Mr. Martineau with the additional two modifications that the second paragraph be amended by inserting after the words no Judge, appropriate language to indicate that the prohibitions apply during his continuance in office or during the time that he was receiving a pension and with the further modification that the provisions with respect

to pensions be made permissive and not mandatory except that pensions once granted could not be reduced. Ready for the question? All those in favor, signify by a show of hands. Contrary? The motion is carried fifteen to five. Any further discussion with respect to Section 12? Mr. Martineau, Section 13.

MR. MARTINEAU: Section 13 has inserted in it the requirement that there be a hearing. This was directed at the last meeting of the Commission. It again includes the language that the Supreme Court may by rule or order exclusively, in other words, that the Legislature cannot interfere with the operation of this section by statute amending a rule so that the power is in the court exclusively to implement and enforce the section. The changes in the last sentence on Page 11 are merely attempting to tighten up the language and are not intended to change any substance.

THE CHAIRMAN: Any questions?

MR. CLAGETT: I merely point out the Committee on Style is pretty definitive.

MR. SCANLAN: I assume the word hearing here

is intended to embrace all the rights required under due process, confrontation, cross-examination, timely notice, et cetera.

MR. MARTINEAU: Absolutely. We don't want to write a due process clause in.

THE CHAIRMAN: Any further discussion of this section? Section 14.

MR. MARTINEAU: Section 14 was not changed at all except to add the word exclusively in the last line.

THE CHAIRMAN: Any question? All right, now, Mr. Martineau, you have one other matter.

MR. MARTINEAU: Yes, I do want to bring to the attention of the Commission a communication from Judge Pendergast as the Chairman of a special committee of the Supreme Bench of Baltimore City detailing certain objections of the Supreme Bench to the judiciary article as adopted by this Commission. I don't want to run through all the items. I am not going to run through any of the objections stated in this letter. A copy of the letter will be sent to each member of the

Commission. I might say, however, that I believe that all of the objections raised by the letter have either been considered by the Committee in its committee meetings or have been considered by this Commission in considering the report of the Judiciary Committee and I don't believe that there is any new matter in here which should be considered except perhaps one thing. This is going to be handled by a modification of a comment in our report. One of the items mentioned was whether the, in each county or in each administrative district, however, the court system is set up, there should be, whether there would be some Judge in that jurisdiction who would have some sort of control over the Judges of the court. In other words, a sub-Chief Judge or presiding Judge or a president Judge or whatever you want to call him.

In other words, someone to take the place of the Chief Judge of the Supreme Bench who would have some authority with respect to the particular city or the particular county. Now it seems to me that there is no reason to mention such an authority in the

Constitution. I believe the Supreme Court in a rule governing the administration of the court could very well provide that the senior Judge or some Judge designated by the Chief Justice or Supreme Court could have this authority, whatever it might be and I think it would be sufficient to mention that in the comment to our, one of the comments to our report rather than putting it in the Constitution itself. I don't believe it arises to the constitutional level. There are a number of other points raised in the letter. I don't think any of them have not been considered and if anyone, of course, wants to raise it, raise any of the points after reading the letter when you receive it, you are, of course, free to do so.

THE CHAIRMAN: Any further question concerning the Fifth Report? If not, we will proceed to a consideration of the report of the Committee on the Executive Department. This is the Sixth Report. While you are getting that together, let's take the opportunity for a short recess.

(Short recess.)

THE CHAIRMAN: We will now take up the

consideration of the Sixth Report of the Committee on the Executive Department. Judge Adkins.

JUDGE ADKINS: Mr. Chairman, I see no point unless you or the Commission desire it to read the first four sections of this report since the changes, although we have not been as farsighted as the Judiciary Committee in underlining, are fairly simple. With your permission, I will refer to the changes we have made as briefly as possible. The first change is in Section 5B.

THE CHAIRMAN: 5B?

JUDGE ADKINS: Yes, eight lines from the bottom of Page 2. We have inserted in here language the essence of which is to permit the General Assembly to call itself into session to determine whether the Governor is disabled. This is the result of a Commission decision at the last meeting. The language we are proposing reads as follows. The General Assembly shall be convened by the presiding officers of both houses upon the written request of the members of each house to determine whether such a declaration should be passed.

THE CHAIRMAN: Is there a question?

MR. SCANLAN: Does that mean every member of both houses shall request the General Assembly shall be convened?

JUDGE ADKINS: My reporter tells me that it should be upon the written request of the majority of each house.

THE CHAIRMAN: Which line?

JUDGE ADKINS: That would be Line 6 from the bottom.

THE CHAIRMAN: Of Section B.

JUDGE ADKINS: Of Section B on Page 2.

MR. MARTINEAU: From the bottom of the page, Mr. Eney.

JUDGE ADKINS: The second sentence of the second full paragraph of Paragraph B. It now reads the General Assembly shall be convened, we add after the words upon the written request of, the words a majority of.

THE CHAIRMAN: Any questions? Just be sure that you make the change everywhere. Would you make it

also on Page 16? That section is repeated on Page 16.

JUDGE ADKINS: Yes, sir.

MR. MILLER: There is just one weakness in the way this is framed. It seems to me if we are going to have a bicameral General Assembly or Legislature, it seems to me that the person who makes the call for this special session should be designated either the President of the Senate or somebody. If you have two houses, both or either, there ought to be one central officer who is responsible for calling that convention after the written request comes in.

JUDGE ADKINS: We have provided, Ted, I thought we had answered that by saying shall be convened by the presiding officers of both houses.

MR. MILLER: Suppose one house says we are going to meet next Tuesday and the other one says next Thursday. I think it ought to be, the actual call ought to go out from one particular person.

THE CHAIRMAN: Judge Adkins.

JUDGE ADKINS: I have no objection to making it by the presiding officer of the senior house

upon a written request by a majority of the members of both houses.

THE CHAIRMAN: I take it the two would agree for the date of the meeting.

JUDGE ADKINS: That was our intention and I can't think it would be any substantial possibility of a disagreement as to a meeting date.

MR. MILLER: I don't think it is particularly important but I do think in a Constitution we ought to have someone responsible for carrying out this job, some one person.

THE CHAIRMAN: What is your pleasure?

JUDGE ADKINS: I can say we do have somebody responsible. We happen to have two people responsible instead of one.

MR. MILLER: But they might not do the same thing? They probably would.

MR. SAYRE: A solution would be a unicameral Legislature.

GOVERNOR LANE: That's what I am afraid of.

THE CHAIRMAN: I take it, Mr. Miller, the

Committee prefers to retain its present form. Do you want to move tochange it?

MR. MILLER: I don't want to delay the action.

THE CHAIRMAN: I assure you we will put the motion so quickly it won't be any delay if you want to move it.

MR. MILLER: I will only facetiously say if we had the Legislature able to call itself together we wouldn't have to have this anyway.

JUDGE ADKINS: The second change is in paragraph C on Page 3, the new last sentence has been added which read as follows. If a vacancy occurs in the office of President of the Senate, the President of the Senate is to succeed to the office of Governor or to serve as acting Governor, the Senate shall convene to fill the vacancy. This again was in response to a recommendation made by the Commission at the last meeting which provides in essence as we have just read. There was a hiatus in the leadership of the Senate in the event the President of the Senate would succeed

either to the acting Governorship or to the Governship under the provisions otherwise provided.

MR. DELLA: Can this be determined at that time whether it will be a temporary or permanent vacancy?

JUDGE ADKINS: Well, I am not sure I understand your question, Mr. Della.

MR. DELLA: Let's say the Governor is only going to be out for a definite period of time but it is known how long he is going to be out and the President of the Senate knows how long he will be out. It will be a temporary nature. Are you saying the Senate shall convene to select a replacement?

JUDGE ADKINS: I would assume that the vacancy would not occur until such time as the President of the Senate had succeeded to the office and was not acting.

THE CHAIRMAN: That's right.

MR. CLAGETT: There is some other vacancy.

THE CHAIRMAN: You specifically provide that the President retains his seat in the Senate unless

he becomes disabled.

JUDGE ADKINS: He ceases to be President of the Senate if he becomes Governor.

MRS. FREEDLANDER: Judge Adkins, you are not going to fill the office of the Lieutenant Governor. That hiatus will remain.

JUDGE ADKINS: That will remain.

DR. BURDETTE: Isn't there a contradiction of the language? If the President of the Senate succeeds in the office of the Governor or serves as acting Governor this Constitution mandates the Senate to fill the vacancy.

THE CHAIRMAN: I don't think that is true in the latter part of your sentence, if he serves as acting Governor the office of President of the Senate is not vacant. That is expressly provided.

DR. BURDETTE: I thought that was expressly intended.

THE CHAIRMAN: It is expressly provided.

DR. BURDETTE: If he acts as Governor one minute the Senate shall fill the vacancy.

THE CHAIRMAN: There is an express provision the office is not vacant if he acts as Governor.

DR. BURDETTE: That is inconsistent.

THE CHAIRMAN: I don't think it is. This refers to a vacancy.

JUDGE ADKINS: If, for example, the President of the Senate died at a time when he was -- you see under our concept we did not, as Mrs. Freedlander said, provide for the substitution of a vacancy in the office of Lieutenant Governor on the theory that the residual power was always in the Senate to select a President of the Senate. So if the President of the Senate became vacant at a time when it was necessary for him to become either acting Governor or Governor the Senate would convene to select a President of the Senate.

DR. BURDETTE: I see. Acting Governor lasts how long?

JUDGE ADKINS: Not more than six months.

THE CHAIRMAN: Any further question? The provision,Dr. Burdette, as to the President of

the Senate continuing as President of the Senate even while acting as Governor is in paragraph (d) immediately following.

DR. BURDETTE: This language says if the President of the Senate succeeds or is to serve as acting Governor, the Senate shall fill the vacancy.

THE CHAIRMAN: It doesn't say that. It says if a vacancy occurs in the office. The office isn't vacant unless the President of the Senate has succeeded to the office of Governor.

JUDGE ADKINS: This does not refer, for example, to the situation of the election of a Senate pro tem when the President of the Senate is in being and is simply serving as acting Governor. It does refer to the situation where the office becomes vacant either by resignation or by death or any other disability.

DR. BURDETTE: I guess I am dense but I don't see why you don't strike the words to serve as acting Governor.

MR. DELLA: Section (d) clarifies it pretty

good.

DR. BURDETTE: But on the other hand Section (d) is just some contrary language or to serve as acting Governor.

JUDGE ATKINS: Let us assume that the Governor and the Lieutenant Governor and the President of the Senate are all three killed in an automobile accident. The President of the Senate ex officio would under the terms of this article of succession, succeeds to the office of Governor. There is, however, no president of the Senate. Therefore, the Senate convenes for the purpose of electing a President of the Senate who would then succeed to the office of Governor. The same thing would apply if the Governor became disabled, and there were no Lieutenant Governor and no President of the Senate.

DR. BURDETTE: Well, in that case, I see. All right.

THE CHAIRMAN: You persuaded me, however, that your original point was correctly taken because the last part of this sentence says the Senate shall

convene to fill the vacancy and in the case of the President of the Senate acting as Governor, there is no vacancy. What you mean is that they select a President pro tiem.

JUDGE ADKINS: I am sorry, Mr. Chairman, I don't agree with that. There will be a, there could be a vacancy in the presidency of the Senate if the President of the Senate, John Jones, died at a time when the President of the Senate ex officio was to succeed as acting Governor because of the disability of the Governor, there would be a vacancy in the office of the President of the Senate.

THE CHAIRMAN: Why?

JUDGE ADKINS: Because he is dead. There is nobody there.

GOVERNOR LANE: All three in the same automobile.

JUDGE ADKINS: Or an airplane.

DR. BURDETTE: At the time when the President of the Senate succeeds to serve the Governor, the Senate shall convene and so on.

THE CHAIRMAN: I am afraid that this end of the table wasn't paying close attention, Dr. Burdette, and we can't hear you.

DR. BURDETTE: If a vacancy exists in the office of the President of the Senate at the time when the President of the Senate is succeeded, then the sentence continues.

MR. SAYRE: What are you trying to say?

MR. SCANLAN: He is substituting at the time when for the word when.

DR. BURDETTE: I don't want the word occurs because the word occurs says the vacancy, says it comes about by the President of the Senate taking this acting job and Judge Adkins says, if the fellow isn't at hand to take the job --

JUDGE ADKINS: If he will propose that precisely, we might accept it.

DR. BURDETTE: I will try to word it this way. If a vacancy, strike the word occurs and say exists in the office of the President of the Senate, and instead of saying when, or just before that, at the

time when and then you have it as I understand it.

THE CHAIRMAN: Dr. Burdette, if you change occurs to exist, do you need the phrase at the time?

MR. CLAGETT: Then you have yourself in a box there.

JUDGE ADKINS: We would accept the alteration of the word, the substitution of the word exists for the word occurs.

DR. BURDETTE: That's better.

JUDGE ADKINS: We do not feel at the time when is anything more than redundant.

DR. BURDETTE: You are probably right.

THE CHAIRMAN: Any objection to the change? Mr. Miller.

MR. MILLER: I don't want to keep picking at little points but it occurs to me that this is a constitution that can't be altered if,as Judge Adkins says, if all three of our top people get killed at one time, it might be very cumbersome to make it a constitutional requirement that the Senate should convene. Now normally I would think the Senate would provide

while in regular session that if something happened, or they could do this, that if something happened they would have a senior member would be ex officio acting as President of the Senate and then there would be somebody there instead of waiting two or three days in time of chaos to get a Senate together to have it adopted. This is only likely to happen in time of extreme emergency, that it shouldn't be a prerequisite for the Senate to meet if they already had arranged for what they want to happen.

THE CHAIRMAN: Judge Adkins.

JUDGE ADKINS: I suppose we could carry this down to any number of alternates in the line of succession as they do in the Federal Government, even down to the Department of Health, Education, and Welfare. Our thought is there are mechanics here and this is unlikely and we felt that this was the point at which we could stop, the President of the Senate. If we should go beyond that, if there is no President of the Senate, we can go to the Speaker of the House.

MR. MILLER: I was going to suggest that the

Senate in normal session could very well say that if the President of the Senate isn't there, the majority leader or so on will serve pro tem as President of the Senate.

THE CHAIRMAN: Mr. Miller, may I interrupt? If the rules of the Senate provide that in the absence or in the event of the death or inability to act of the President of the Senate, that the President pro tem should be the President of the Senate, would then not that carry into effect your suggestion without any additional language here?

MR. MILLER: Except you have got to say you have to have the Senate convene.

THE CHAIRMAN: No. Well, it depends on how the rule is phrased. Did you follow me, Judge Adkins?

JUDGE ADKINS: If I understood you, maybe I don't understand Ted Miller's point. What I thought he meant was there was nobody to convene the body or kind of take the leadership of the body once it was convened.

MR. MILLER: I am only concerned with an

order to make this acting President of the Senate. They would have to convene the Senate and do it all over again.

JUDGE ADKINS: I think we would not want to see a chain of succession to the Governorship below the President, the duly elected President of the Senate. We would be prepared, the Committee at least would be prepared to accept whatever chaos resulted during the short period of time it took the Senate to convene for the purpose of electing a presiding officer.

MR. MILLER: Well, if we were under atomic attack or something, it might be weeks before you could get a Senate together and if they arranged for it aheadof time, I see no objection. Of course, they would have to convene the Senate if there was nobody to take it but why couldn't they arrange that in advance?

THE CHAIRMAN: But Judge Adkins and Mr. Miller, my point was, and I perhaps didn't make it too clearly, if the rules of the Senate provided that in the event of the President of the Senate, the President pro tem should be the President, I take it there would

then be no vacancy in the office of President of the Senate.

JUDGE ADKINS: I think that is correct.

THE CHAIRMAN: And under this provision then exactly what Mr. Miller is suggesting would come about.

JUDGE ADKINS: I do note the rules so provide.

THE CHAIRMAN: But they could?

JUDGE ADKINS: If they did that would answer the problem.

MR. MILLER: That is all I am concerned with, I don't want to make anything happen.

THE CHAIRMAN: I take it the Senate could in effect extend the succession indefinitely by providing for succession to the office of President of the Senate?

JUDGE ADKINS: Automatically.

MR. MILLER: Then they wouldn't have to have a special session to do that.

THE CHAIRMAN: Yes. Any further questions

on this section? Judge Adkins.

JUDGE ADKINS: Section (d), we have added a clause at the end of the last sentence of the section, the full sentence reading, when the President of the Senate serves as acting Governor he shall continue to be President of the Senate, but during his service as acting Governor his duties as presiding officer shall be performed by such persons as the Senate shall select. That was added.

THE CHAIRMAN: Any questions?

JUDGE ADKINS: It indicates a president pro tem is constitutional.

THE CHAIRMAN: Section (e).

JUDGE ADKINS: Section (e) is a relatively new section reading as follows. The Supreme Court shall have exclusive jurisdiction.

THE CHAIRMAN: Pick it up from Page 4, powers thereof.

Any questions? Section 9.

JUDGE ADKINS: Section 9, I think the Commission has not heretofore seen. With your permission,

I will read it.

The Governor shall be responsible for the faithful execution of the laws.

MR. MARTINEAU: I have one comment.

JUDGE ADKINS: This is one I thought would get by without comment.

MR. MARTINEAU: The reason I suggest that is probably out of retaliation. The Commission amended one section of the judiciary article where we referred to laws by putting in by this Constitution or by law and I wonder if it shouldn't also say here faithful execution of the Constitution in the laws.

JUDGE ADKINS: I would say no, because it seems to me the Constitution itself executes it.

MR. MARTINEAU: That is what you said. That was exactly my point on which I lost. I am not making a motion.

THE CHAIRMAN: Any further question or comment concerning 9(a). Section (b).

JUDGE ADKINS: The Governor may at any time require information, in writing or otherwise, from officers

of any administrative department, office, or agency upon any subject relating to their respective offices.

THE CHAIRMAN: Any questions? Mr. Martineau.

MR. MARTINEAU: Administrative men executed?

JUDGE ADKINS: No. Well, Mr. Power points out to me that we use the term administrative department in Section 11. Perhaps the reason it is used here. I have no objection if it is administrative and executive department. The obvious intent are those departments which carry out the policies of the state.

MRS. FREEDLANDER: Excuse me, you say executive and administrative below.

JUDGE ADKINS: I would have no objection to making it executive and administrative here.

MR. MILLER: Why don't you strike out administrative.

MR. MARTINEAU: Just be consistent.

THE CHAIRMAN: Since we are talking throughout about executive department wouldn't it be preferable to use that term.

JUDGE ADKINS: Striking out the word

administrative letting it read any department, office or agency.

THE CHAIRMAN: That would embrace then any judicial department, for instance, or the legislative department?

JUDGE ADKINS: Yes.

THE CHAIRMAN: Any objection to striking the word administrative? The effect of this would be to give the Governor power to require information in writing or otherwise from members of the judicial department, members of the legislative department and members of the executive department.

MR. BROOKS: Those are branches, I would think.

MR. SCANLAN: I would object to that. It carries the implication that the Governor could request from the Judge of this state the basis on which he reached a decision in a particular case and I would prefer it pertain only to the executive or administrative department. What the Legislature does and what the judicial does is none of the Governor's business unless

they want to tell him.

THE CHAIRMAN: I would assume if the Governor wanted to find out the basis for a Judge's decision, he would read his opinion.

MR. SCANLAN: Yes, but this language can be interpreted that the Governor would have the power to inquire further.

MR. MARTINEAU: Could this be cleared up by having it read relating to the operation of their respective offices which is what I think you probably mean. I think there is a reason for requiring this because the executive has the responsibility for making up the budget of these departments. It seems to me the Governor has every right to say you are asking me for ten clerks in this office. Why do you need ten clerks?

MR. SCANLAN: Other provisions deal with how the budget and Legislature are transmitted to the Governor. Doesn't the intention of the Committee as it is originally drafted, leaving aside the language that appears here, wasn't the intention of the Committee

to really give the power to the Governor to require anybody and for the Governor to state whether it be the judicial or Legislature to furnish this information.

JUDGE ADKINS: No, to give the Governor the right to acquire information from any administrative or executive department of the state. Mr. Power just pointed something out to me which I hadn't realized. If you strike out the word administrative, it could give the Governor the right to ask for advisory opinions from the Supreme Court which I would at least not favor. So I would suggest that we go back to the proposal executive and administration department, office or agency.

THE CHAIRMAN: I am not sure I follow you when you say go back to. You are talking about Section 9(b) and the only word used there is administrative.

JUDGE ADKINS: That we add the word executive before administrative.

THE CHAIRMAN: And your present suggestion is to do what.

JUDGE ADKINS: Make it read executive,

administrative or.

THE CHAIRMAN: And, or.

JUDGE ADKINS: I would make it say and.

THE CHAIRMAN: What about the administrator of the courts?

JUDGE ADKINS: You are asking me whether that is included in here or which is to give him the authority.

THE CHAIRMAN: Both. I might say it would be doubtful if it would be an administrative department. I would assume there would be no reason why the Governor could not ask for information from the administrative office of the court but I don't know.

JUDGE ADKINS: I must admit I don't see the distinction between the and and the or but if it is acceptable to the Commission, it is to me.

THE CHAIRMAN: The suggestion is that paragraph (b) be amended by inserting at the top of Page 5 the word executive or before the word administrative. Any objection?

MR. MILLER: Make the word department plural,

departments.

THE CHAIRMAN: If you have the word and at the end of Page 4 you would want department singular. Is there any objection to inserting the words executive or --

MR. SAYRE: Mr. Chairman, we are talking about the executive department and I think that is confusing.

THE CHAIRMAN: Judge Adkins, you want to comment?

JUDGE ADKINS: I have no comment. I think the executive or administrative, I think is perfectly clear and reasonable.

THE CHAIRMAN: You object or want to make a motion, Mr. Sayre?

MR. SAYRE: I don't think this is a satisfactory answer. Maybe more thought ought to be given to it. Anything in which you have the Governor's responsibility in the budget concerns something there that he might want to ask including the judiciary and if so, how you can make it flexible enough where you can

go outside. Say you have a regulatory commission that is not anywhere.

THE CHAIRMAN: All state agencies are in one of the three major departments of the state.

MR. SAYRE: You could have something responsible to the Legislature and administered by the executive department.

THE CHAIRMAN: Well, I would take it then that it would be an administrative office?

MR. SAYRE: That is why I questioned the need for inserting executive when we are talking about the executive department of which the governor is the head.

THE CHAIRMAN: Well, I don't think we get anywhere just debating. Let's make a motion and make a decision. You want to move?

MR. SAYRE: I am not prepared.

THE CHAIRMAN: Well, I take it that what you were suggesting is that we not amend the existing language in (b).

MR. SAYRE: I move we leave it as it is.

THE CHAIRMAN: Is there a second?

MR. MITCHELL: Second.

DR. BURDETTE: What is the motion?

THE CHAIRMAN: The Committee has suggested that Paragraph (b) be amended by adding the words executive or before the word administrative at the top of Page 5. The motion is to leave the section as it appears on Pages 4 and 5. Dr. Burdette.

DR. BURDETTE: I think I have an objection to this and I would like to bring it to your consideration. I should think that the Governor may properly ask from the heads of departments. I think it is very dubious, for instance, whether he should write to me as an officer of the University of Maryland and not to the president of the University of Maryland and require me to answer. This applies throughout the state. Why? I think it very dubious for the Governor to pick out anybody, the university may be a poor example, but take the State Department of Health and take the 15th man and advise him I want everything. This is a constitutionally required arrangement that officers report directly to

the Governor instead of through the department heads and I am dubious of it.

THE CHAIRMAN: I wouldn't go quite that far that they report directly to him, it means he can bypass the head of the department or the intermediate head if he chooses to do so.

DR. BURDETTE: But should we make this a constitutional provision in the state?

THE CHAIRMAN: Are you asking me? I would, yes. Judge Adkins.

JUDGE ADKINS: We thought so. It is in most constitutions. It is in the model constitution and our committee felt that it was a constitutional dimension and hence we have so recommended it.

THE CHAIRMAN: Dr. Jenkins.

DR. JENKINS: As administrative officer, I certainly agree and am sympathetic to Dr. Burdette but I do think the Governor must have the right to address inquiries to anyone.

THE CHAIRMAN: Any further discussion?

DR. JENKINS: The matter of courtesy, the

Governor would not do this.

DR. BURDETTE: I have one on my desk now from the Governor and didn't answer it and is addressed to state department heads of agencies. I am not one so I did not answer it.

DR. BARD: You might be interested in the way the Michigan Constitution states it. The Governor shall have the power and be his duty to inquire upon the condition and administration of any public office and the acts of any public officer, it goes on.

THE CHAIRMAN: Any further discussion? Ready for the question?

DR. BURDETTE: That is much better.

THE CHAIRMAN: The question arises on the motion to leave Section 9(b) as it presently appears on Pages 4 and 5 without the addition of the words executive or before administrative department. Ready for the question? All in favor of the motion, signify by saying aye. Contrary, no. The noes have it. Any further questions with respect to 9(b)? Section 11.

JUDGE ADKINS: Section 11(a) is a new

section which the Commission has not yet heretofore seen. With your permission, I will read it. All executive and administrative offices, agencies and instrumentalities of state government and their respective functions, powers and duties, shall be allocated by law among and within principal departments. Regulatory and quasi-judicial agencies may, but need not, be allocated by law among and within principal department. The head of each principal department shall be either a single executive or a board or commission. When a board or commission is at the head of a principal department, chief administrative officers may be provided for it by law.

I would like to read the rest of this, Mr. Chairman.

(b) The General Assembly shall by law prescribe the functions, powers and duties of the principal departments and of all other agencies of the State and may from time to time reallocate offices, agencies and instrumentalities among the principal departments, may increase, modify, diminish or change

their functions, powers and duties and may assign new functions, powers and duties to them; but the governor may make such changes in the allocation of such functions, powers and duties as he considers necessary for efficient administration. Those changes which affect existing law shall be set forth in executive orders which shall be submitted to the General Assembly. The General Assembly shall have sixty days of a regular session to consider these executive orders and, if specifically approved or not specifically disapproved or modified, they shall have the force of law at a date thereafter to be designated by the governor.

I might say by way of explanation that our concept here is to grant substantial executive power of reorganization within the state in terms of the reassignment of powers and duties within departments. It is not our concept that the Governor shall have the power to create or augment new provision or new plans without executive, without legislative approval. We feel that the proper, that it is impossible in the Constitution to try to specify the power, the Department

into which the state, which the state shall be organized. As you know, that matter is now under study by a Commission appointed by Governor Tawes. We have tried to get such help as we could from that Commission in terms of drafting this reorganization power. One of the principal matters that we debated was whether or not we should, as many Constitutions do, and as indeed the model proposes, recommend a limitation as to the number of principal departments. We rejected that idea on the theory that any number would be more or less arbitrary and that it was not really essential. We have provided that the regulatory boards which fall into somewhat of a separate category should not necessarily be assigned within a principal department. This is preliminary to, it may turn out to be a somewhat more controversial problem occurring in our next session. Perhaps we should limit ourselves to a discussion of these two sections.

THE CHAIRMAN: Judge Adkins, I take it that by the use of the term executive and administrative offices, agencies and instrumentalities, it is intended

that these sections would apply to the judicial department and administrative departments such as administrative offices of the courts?

JUDGE ADKINS: No, sir, we did not have that in mind. Our concept here was this was the executive and administrative offices of the executive branch of the government.

THE CHAIRMAN: I don't quarrel with the idea it should. As a matter of fact, they do now. The administrative office of the court is subject to the control of the Legislature. The Clerks of the Court are subject to control of the Legislature and the Comptroller. I wonder if you mean to exclude the administrative departments of the judicial branch from the operation of this provision.

JUDGE ADKINS: We did not specifically consider the administrative officer and the clerks. My view, the division of the powers, the administrative office of the court would be a matter for the Supreme Chief Justice of the Supreme Bench. It should not be a matter which would be subject to reorganization by the

chief executive. In other words, I can conceive of a very definite conflict if the Governor had the right to reorganize the administrative office of the court.

THE CHAIRMAN: Well, I am not expressing an opinion. I don't see the difficulty but is not the language here capable of that interpretation that it would be applicable to the administrative offices within the other two departments of government?

JUDGE ADKINS: Well, our thought was that it was not but I gather it must be.

THE CHAIRMAN: Mr. Scanlan.

MR. SCANLAN: I notice it is late in the day to be suggesting changes in the text but to offset the problem, the Chairman raised to make it perfectly clear the power is limited to agencies within the executive branch, you could strike the words executive and administrative appearing in the first line of (a) and then add the phrase within the executive branch to follow the phrase state government. The section would then read all offices, agencies and instrumentalities of state government within the executive branch, and

then follow with the rest. Would that capture your objection, your point, Mr. Chairman?

THE CHAIRMAN: It would clarify it. I am not sure as to the question of policy involved. What is the position of the Committee?

JUDGE ADKINS: I think that would answer the policy we were attempting to implement. We did not envision that the Governor under his power of reorganization under paragraph (b) or under the division in the principal departments under paragraph (a), would have the right to interfere with either the legislative branch or the judicial branch to that extent the language would state what we tried to state.

THE CHAIRMAN: Would not be able to change, for instance, the depth of legislative reference.

JUDGE ADKINS: No, since this is a legislative function.

THE CHAIRMAN: Mr. Bond.

MR.BOND: I would disagree with Judge Adkins because I bring to the Commission the Public Service Commission and the State Racing Commission. The limited

language proposed by Mr. Scanlan the Governor would have no control over that.

JUDGE ADKINS: That is part of the executive department.

MR. BOND: Are they?

MR. CLAGETT: They are all appointed by the Governor.

MR. MILLER: How about Workmen's Compensation?

JUDGE ADKINS: I would take it everything would be included except the officers' responsibility to the judicial branch and the legislative branch and those officers responsible to that which would include the department of legislative reference and the administrative officer of the court.

MR. SCANLAN: Precisely.

MR. BOND: I agree as a matter of policy.

THE CHAIRMAN: You could remove any doubt with a little more phraseology and say instead of included within the executive branch say other than those included in the executive and judicial branch.

JUDGE ADKINS: I find that not acceptable.

THE CHAIRMAN: I have some difficulty with it because I think the status of some regulatory agencies is perhaps not clearly not within the legislative branch. The Public Service Commission is exercising a legislative function. Tax courts are another illustration.

MR. MARTINEAU: Maybe you would want to make it, make your phrase difficult to say not solely within.

THE CHAIRMAN: Could perhaps.

MR. MARTINEAU: I think that is the idea if I am not mistaken.

MR.BOND: I think we are all saying the same thing.

THE CHAIRMAN: Can we get the question of principle clear and then resolve the language? Does anybody dispute the principle advocated by the Committee that the reorganization power here conferred upon the Governor is not intended to be applicable to the legislative judicial departments. Do you disagree with that principle?

MR. SAYRE: No, I was thinking of a positive rephrasing.

THE CHAIRMAN: Let's not get the language but the principle first.

MR. SAYRE: Which is on the principle.

THE CHAIRMAN: All right.

MR. SAYRE: All functions and duties that fall within the responsibility of the executive department.

MR. BOND: No, no.

THE CHAIRMAN: It doesn't help me. It may help some of the others. I was going to suggest that we, if we agreed on the question of principle that we leave to the Committee and its reporter the matter of working out the best phraseology to accomplish that.

MRS. BOTHE: I second it.

DR. BARD: So moved.

THE CHAIRMAN: All right, any further question or comment with respect to Section (a)?

DR. JENKINS: I have a comment. The last sentence in (a) is superfluous. What does this add?

Isn't this implicit?

JUDGE ADKINS: We thought it was, I won't say essential. We certainly thought it was helpful in view of the reference later to the power of the Governor to appoint chief administrative officers in addition to the power to appoint chief executive officers.

DR. JENKINS: I don't feel strongly about it. It seems to me to be unnecessary.

JUDGE ADKINS: We would prefer to see the language left in, in view of the later impact.

DR. BURDETTE: One I don't understand is does this mean, for instance, that some means of choosing this officer could be set up by law so that the Governor could not reorganize? What does it mean?

JUDGE ADKINS: Well, may I use a concrete example? It means, for example, that if the Racing Commission is headed by a board of three, as I think it currently is, that the Legislature could provide that while --

MR. CLAGETT: There are five.

JUDGE ADKINS: That the Legislature could provide that an executive secretary, for example, of the Racing Commission, would be appointed who would be the chief administrator as opposed to the chief policy maker of the board and would later provide that the Governor shall have the power to hire and fire the chief administrative officers thus set up.

THE CHAIRMAN: Any further question on Section (a)? Any question on (b)? If not, we move forward to Section 12, on page 8.

JUDGE ADKINS: The Governor shall appoint all single executives serving as heads of principal departments and all chief administrative officers serving under boards or commissions which head principal departments, except presidents of institutions of higher education. These appointees shall have such professional qualifications as may be prescribed by law and shall serve at the pleasure of the Governor.

(b) The governor shall appoint the members of all boards or commissions which serve as heads of principal departments. The term of office of such

members shall be prescribed by law so that the Governor, upon taking office following his election, shall be able to appoint at least one-half of the members of the board or commission. Such members may be removed as prescribed by law.

(c) Presidents of institutions of higher education, members of regulatory and quasi-judicial agencies, and all other officers in the administrative service of the State, shall be appointed and may be removed as prescribed by law.

I think unquestionably some comment on this comment might be in order.

THE CHAIRMAN: Go right ahead.

JUDGE ADKINS: We have felt quite strongly and I say we, I think finally this recommendation was unanimous although we in our thinking wandered somewhat all over the lot, that if we were to modernize the state so it was in a position to meet the expanding demands of our economy that the Governor had to be vested with sufficient power to operate as an effective and strong chief executive. This was as we have pointed

out in our report, not a novel conclusion of ours. It is generally, I think, the accepted philosophy of students of the field of state governments now. There is prior sanction in the Soboloff Report which made exhaustive studies approaching two years on the administrative structure of the state. It has been commented on at least in one department which we have quoted in our report by outside extremely competent management consultants who have recommended that such a provision should be available and in line with what he at least considers to be the best modern administration we have felt that the Governor should be the responsible officer for the appointment and discharge of the people who are really the policy making people in the state. We have had considerable difficulty with the question of administrative boards and policy making boards. Maryland, for many years, as all of you know, has adopted a policy of attempting to insulate the executive power from carrying out certain of these functions. There seems to have been, if I read it right, almost a fear of executive domination. To that extent many of

the boards now have terms which overlap the period of any single gubernatorial election. So it is impossible in most situations for a Governor to secure control of many of the agencies of the state except well into his second term. This means, as we see it, that although a Governor is charged by his general position with the responsibility of managing the affairs of the state, in many instances he cannot do so until well into his second term because he cannot put into office people who are sympathetic with him in their policies. We have no, we are conscious of the charge of politics as has been said earlier, the political animal must operate politically. We have therefore proposed not the complete abolishion of all policy boards as we in fact considered, but have recommended simply that all boards should at least rotate their membership so that a governor when he takes office, has a 50 per cent of the membership of all boards subject to his appointment. There is a break here by virtue of the fact of having a carry-over of 50 per cent of experienced personnel. More than that

we have felt the chief policy individuals, that is the chief executives of the heads of the various departments and the chief executive officer should be subject to the will of the Governor. I have so far talked for four minutes without mentioning what is perhaps the most controversial subject inherent in this proposal and I suppose I can't get by without mentioning it and that is the Superintendent of Schools. Under this proposal, I think it would be safe to say that the Superintendent of Schools would be subject to the executive will. This matter gave us great concern. I think one is always reluctant, certainly I have learned to be reluctant to tamper with anything relating to the Public School System. We did feel, however, and I must say my own personal position is buttressed somewhat by the recommendation of the Finance Committee, that the mandated funds, the budget of the School System should basically be inviolate, that a department which spends as substantially a part of the income of the state as does the School system should be in some way responsive to the executive will. This is in no

sense a recommendation for politics in the School System. It is simply an attempt to coordinate and make it possible to coordinate the functions of the most important single function of the state government with the remaining elements of the state government through the power of the chief executive to appoint the head of the department. I am confident there will be dissent from this position.

THE CHAIRMAN: Any discussion? Wait just a second. I shouldn't have said discussion. Are there any questions first?

DR. BARD: I do have a question.

THE CHAIRMAN: Mrs. Bothe.

MRS. BOTHE: Maybe we have the same question. You mentioned the Superintendent of School because that, I gather, is the hottest office that might be affected but --

JUDGE ADKINS: I have some reason to think that.

MRS.BOTHE: And I will speak to that perhaps later but during the questioning, how many offices would

actually be affected. I see you have got an appendix containing a list of what I assume to be all of the offices you could think that would come under this revised provision and it is a little difficult on taking a hasty glance at it to know just how widespread on an immediate practical basis the change would be. For instance, I don't believe you indicate, maybe you do, the length of terms of the various boards now.

JUDGE ADKINS: We do not. It is a little difficult to answer your question because of the fact that I don't know how many principal departments the ultimate reorganization statute will result in. That is a matter, as I said earlier, that is now under study. The intent of this is to give the Governor the right to appoint and to discharge at will the heads of the principal departments. How many of those principal departments there will be, I can't answer. It is not our intent that he should be able to go below the chief executive officer of each of the principal departments. Now I would guess unquestionably there would be perhaps health, perhaps law enforcement, and

you can just go on and group the state functions in any way you want to. That would be done pursuant to the legislative will, pursuant to Section 11. Once those principal departments were established, the Governor would then have the right to appoint and discharge the heads of those principal offices.

MRS. BOTHE: For instance, the Board of Regents at the University of Maryland.

JUDGE ADKINS: That would not be covered here.

MRS. BOTHE: You have exempted the press.

JUDGE ADKINS: No, we have provided the term of boards can be as the Legislature can provide, provided that only half of them shall be available during his administration. They would serve a term. They would not be subject to being fired at will. They would all be subject to being appointed, serving their full term.

THE CHAIRMAN: In the case of Regents, the governor presently appoints.

JUDGE ADKINS: Yes.

MRS. BOTHE: My question is directed to the question of tenure of appointment and the provision that upon ascending office the new Governor would have the right to replace at least 50 per cent of existing policy boards.

JUDGE ADKINS: I don't think that is the intent. The intent is that the phasing of appointments, which now can be staggered over a period of six years, would be staggered in such a way that at least 50 per cent of the board would be up for appointment every four years.

THE CHAIRMAN: During every period of four years.

JUDGE ADKINS: During every period of four years.

MRS. BOTHE: You say here taking office upon his election.

JUDGE ADKINS: This again would relate to the provisions for the appointment. It is not our intention that every time a new Governor goes in, he automatically fires half and appoints half. The

statutory legislation relating to the boards would be so drawn that the terms of half of the members of the board would expire coincident with the new Governor taking office. It may be a distinction without a difference.

THE CHAIRMAN: Mr. Scanlan.

MR. SCANLAN: That was my question, Dale. Do you intend that immediately upon taking office, the appointments would be so prescribed by law that at once he could, that the 50 per cent would go out or is it your intention during his first term after taking office he would be in position to replace 50 per cent?

JUDGE ADKINS: The terms of the boards would be coincident with the gubernatorial term, so coincident with the demise of the old chief executive, at least half of the members of the board would go so a new Governor taking office would have at least 50 per cent of his own appointees to each of the major policy making boards.

THE CHAIRMAN: Mr. Martineau.

MR. MARTINEAU: I don't quite understand why since you are permitting the Governor to, I think, obtain control over all of the boards or commissions, why you also have to give the Governor the power to appoint a chief administrative officer operating under these boards and commissions. It seems to me that the control is enough and that like take, for example, the executive secretary of the State Racing Commission. I frankly can't understand why he should have to be appointed by the Governor. He has to work directly with and directly under the State Racing Commission and his functions are not policy making functions. They are merely administrative. I think it would be much more important to have him operate closely with the Commission appointed by the Governor than be somehow able to get along with the Governor. I frankly don't like it.

JUDGE ADKINS: The State Racing Commission is a problem, I will concede. To begin with, I don't know and I don't think we have been able to determine whether it is a regulatory quasi-judicial agency or

exactly what function it has. I would assume it would be a regulatory agency. Now that being the case under Section (c), the members of that body would be appointed as prescribed by law so that they could be appointed for a term irrespective.

MR. MARTINEAU: Take an example of something purely within the executive. Maybe the State Water Resources Commission. I can't see any reason why the executive secretary of that should be appointed by the Governor.

THE CHAIRMAN: This is just the question perused now.

JUDGE ADKINS: Here again I would say that I can't be sure but I would guess that the head of the Water Resources Board would not constitute a principal department and if it were not a principal, I would imagine, for example, it would be ground under some other department. If it were not a principal department the Governor would not have this power. So it would not reach that far down in the executive hiarchy.

THE CHAIRMAN: Dr. Bard.

DR. BARD: My question has been asked. I do want to get into the debate.

THE CHAIRMAN: Mr. Della.

MR. DELLA: Judge, would this include in your recommendation the Workmen's Compensation Commission also?

JUDGE ADKINS: The Workmen's Compensation Commission in our thinking would fall under paragraph (c) of the quasi-judicial agency.

THE CHAIRMAN: Any further question?

MR. CLAGETT: The executive secretary of the Racing Commission reports to the Governor on the status of various funds which have been built under that Commission by law such as the Maryland Breed Fund, such as the Building Fund insofar as the tracks are concerned and there is a difference between the operation of that fund relating to the mile tracks as distinguished from the half mile tracks. So the Governor should have access to an appointive power or firing power over that individual because of the responsibility with respect to those funds which carries on over and through

the tenure of the Commissioners.

THE CHAIRMAN: Mr. Bond.

MR. BOND: I have a further response to Mr. Martineau's question, if I may, sir, please. It is a great oversimplification to think throughout the state the boards establish policy with an executive here. That is not the case. It varies tremendously in each department and by statute throughout the entire state government.

THE CHAIRMAN: Any further questions? Comment on the section? Any motions to be made?

DR. JENKINS: I would like to speak to the issue of the appointment of the Superintendent of Schools.

THE CHAIRMAN: Would you make a motion so that we can then engage in formal debate?

DR. JENKINS: My motion is at the top of Page 9, second line, replace the period with a comma and add the State Superintendent of Schools.

JUDGE ADKINS: May I have that restated?

THE CHAIRMAN: Second line after the words

higher education, strike the period and add what?

DR. JENKINS: State Superintendent of Schools.

THE CHAIRMAN: No and, and the State Superintendent of Schools. Did you get it, Judge Adkins?

JUDGE ADKINS: Yes.

DR. BARD: I second that.

DR. JENKINS: Also on paragraph (c), the second line after institution of higher education, put a comma and add the Superintendent of Schools.

THE CHAIRMAN: Paragraph (c), after education.

DR. JENKINS: Now this Commission has had several instances in which we have considered education as a unique and special function of government and something to be safeguarded from political influence, provided for the school fund, not the school fund, but the funds that we support, public education safeguarded and we have considered the autonomy for the University of Maryland and in this very exception we

except presidents of institutions of higher education. It would be incongruous for the Governor to appoint the president of the University of Maryland. The State Superintendent of Schools is responsible to the State Board of Education. This has worked very well in Maryland even during Dr. Pullen's tenure when there were plenty of instances of conflict with the Governor. I think it is very essential that the Superintendent of Schools have some degree of independence and I do know that this particular issue is of great and vital interest to the people of the state who are interested in education.

THE CHAIRMAN: Dr. Bard.

DR. BARD: I would like to add two points to what has been made. It is highly important that we look upon the State Board of Education in the same way as we look upon the Board of Trustees of a college and the superintendent would have the same relationship to the State Board and thus to elementary and secondary education as the president of a college would have to higher education. I don't see any reason for differentiating

As a matter of fact, just as it is important for us not to be swayed by momentary requirements or something that may be an expediency for the moment, so you need a contuining of thinking in this regard and this is yet another thought. Secondly, I think the professional people in education would be highly disturbed if we did not look upon the flow clear to the top from the profession which includes the superintendent much as those who are in the field of higher education look upon the presidency as being embraced within the profession.

THE CHAIRMAN: Mr. Bond.

MR. BOND: I can only apply to this that the very arguments that Dr. Jenkins used and Dr. Bard used apply to the people who are concerned with welfare, mental hygiene, with health, with forestry and parks, parole and corrections. You are going to give the Governor a strong cabinet or you are not. The arguments apply but they are overriding by the arguments that you have to let the Governor run the state.

MR. CLAGETT: There is a very real distinction between the autonomy that we were contemplating either

statutory or constitutional with respect to the institutions of higher education as compared to the secondary schools and the reason, primary reason that comes to mind is the research and all that it carries with it.

THE CHAIRMAN: Any further discussion? Mrs. Bothe.

MRS. BOTHE: I am a little quizzical as to whether the Committee isn't sacrificing what was a beautiful theory to which I subscribed wholeheartedly to a practice which has turned out to be very effective in the state. The Miscellaneous Provisions Committee, in its report this morning and the sections which we didn't have occasion to discuss make certain, or draws certain conclusions about the present means of selection of the Board of Education and the Superintendent of Education and because that system was apparently working so smoothly, our Committee felt it was unwise to upset the apple cart by placing those offices in the Constitution or in any other respect providing for change. I don't know that the principles there would

differ in any respect from a number of other Commissions or organizations. I agree with Mr. Bond that the educational system might not be one to particularly single out in this respect. But it seems to me that the Committee has proceeded on a theory which might be a tremendous mass of practice and unless there is better evidence, particularly as pertains to certain agencies, I am thinking of the Board of Regents of the University of Maryland, which is appointed, there are eleven members who receive appointments for seven years. Under this proposal, the terms of those members would have to be revamped so that 50 per cent of the membership expired every four years. I am sure there are a number of other examples where a well functioning system, and nobody here today is questioning that the Board of Regents at the University of Maryland has been functioning well under its present tenure and method of appointment, this would be completely out the window by virtue of the new theory which the Committee on the Executive Department prescribes and I am sure that there are a number of other examples similarly. I think, for

instance, the Patuxent Institution, where I serve on the Advisor's Board. In that instance the chief executive is selected by the Board which in turn is nominated for terms of five years by the Governor. This has functioned exceedingly well. The same person has been the chief executive there since the inception of the institution. For the most part, the same persons have served on the board. I am wondering what kind of chaos is going to result in any number of state agencies if these provisions are literally written into the Constitution.

THE CHAIRMAN: Mr. Martineau.

MR. MARTINEAU: My question goes to the, to Dr. Jenkins. As I read this, if you take the School Superintendent would be appointed pursuant to law, which means the law could provide he could be appointed by the Governor and I just wonder what the purpose is in doing what you are suggesting.

DR. JENKINS: Well, I think the purpose is very obvious. If the Constitution says he must be appointed by the Governor then the Legislature could

not provide otherwise.

MR. MARTINEAU: That is correct. I think you are in more trouble if you say by law, which means he is appointed by the Legislature and then you are really going to be in trouble.

THE CHAIRMAN: Any further discussion?

MR. POWER: I thought I might give the results of some research we had done into the method of selecting school superintendents in other states. This is only a report of 45 states, the short time we worked on it, we missed five but the research indicates that 23 states the School Superintendent is elected and in 19 states, the School Superintendant is appointed by the Board and in 4 states presently the School Superintendent is appointed by the Governor.

MR. MARTINEAU: I would like to ask a question as to those figures.

THE CHAIRMAN: Go ahead.

MR. MARTINEAU: Is there any indication where the School Superintendent is elected whether the School Superintendent serves under a Board? I think

your figures were given on the assumption there was a State Board of Education in each case. I don't know this is true.

MR. POWER: In this survey, I can't answer that question, Mr. Martineau. We are having the rest of the material prepared.

DR. BARD: May I ask a question on the figures?

THE CHAIRMAN: All right.

DR. BARD: As for those four cases where the Superintendent is appointed by the Governor, I would like two answers. First what are the four states, and secondly, is there a Board over the Superintendent in those four cases. Mr. Martineau's question was in regard to other cases. In these four cases.

MR. POWER: Let me answer your first questions. I will have to look for the answer to the second. The four states are Alaska, New Jersey, Tennessee, and Virginia. I will look for the answer to the other question, Dr. Bard.

THE CHAIRMAN: Any further question? Mr. Sayre.

MR. SAYRE: I think personally this is a very hard thing to decide absolutely but if you have a Board that has at least continuity provided by half of it and this does not mean that the Governor could not reappoint members whose term does expire and if you have a, this is part of the executive department in which the administration is done, it would seem to me you would have more efficiency. I don't mean you sacrifice anything because of this but I think the efficiency is important which I question sometimes being done at least under the existing system. You do have the requirement that anyone appointed to any department under this Constitution shall have such professional qualifications as may be prescribed by law and that was a very considered clause meaning therefore you are going to have someone that has to have the professional qualifications before the Governor could appoint him. It would seem to me that this area could very well have greater encouragement through an enlightened or

impartial Governor where he sees people in the educational field wish they could move ahead farther than they can under the existing system. There is no reason why the Governor couldn't take the bull by the horns and do more by this type of system than under the existing and I don't think that the fears that the educators often express is more than they may feel, that they won't have the same rapport with the Governor. I don't think that is a real fear that will develop.

MRS. BOTHE: Can I ask a question? I wondered how many other states, if any, gave the chief executive such complete and absolute powers over the executive department.

THE CHAIRMAN: Well, you are talking about the state superintendent.

MRS. BOTHE: No, I am speaking generally of the proposal.

THE CHAIRMAN: I ask you to defer that until later because the motion now is only with respect to the state superintendent. Any further discussion on this motion?

DR. BARD: Is the seconder permitted to make a brief comment?

THE CHAIRMAN: No, sir.

MRS. BOTHE: When we vote on this motion, I myself propose some piecemeal exceptions to this paragraph.

THE CHAIRMAN: You will have an opportunity later to move the whole sentence or consider anything else.

MRS. BOTHE: I am just wondering which way to vote.

MR. MARTINEAU: I am having the same problem.

THE CHAIRMAN: The vote arises now merely on the motion to amend the section and I will rule so there will be no uncertainty about it that that does not mean the section as thus amended is approved. It merely means the sections thus amended for further consideration by the Commission. Before Dr. Jenkins closes, I would like to state my position. I think this is again one of those areas that is very, very gray, neither black nor white and I think logic is

entirely with the Committee and on principle, the Governor ought to have exactly the same control over the State Superintendent of Schools as he would over any other executive officer of the department of the executive branch. However, I think this is one of those cases where logic must yield to other and I think more compelling reasons. We have here, as indicated by Mr. Power's comments, an area where the ddcision of the best method of selecting the superintendent by other states varies widely. You haven't any clear preponderance in favor of any one method except that the elected method is used more widely than any other. This, I think, reflects what has certainly been true in Maryland historically and that is that the people have regarded education and the Department of Education as if not something except,rather nevertheless something that should be very carefully guarded, free from politics and reserved to the power of the people. I think the effect of the motion here would be to reserve to the Legislature the power to decide whether the Superintendent should be an elected official which I

hope would never happen or should be appointed by the Governor or appointed by the Board or selected in some other way. Whether he should serve at the pleasure of the Board or the pleasure of the Governor, whether he should be removed for cause or removed for any reason and it seems to me under all the circumstances that this more nearly accomplishes what the people of the State of Maryland want. One other comment I would make on a purely practical basis and that is that the sensitivity of the people of Maryland with respect to the Superintendent of Schools and the administration of the School System ever since the precise time was set up by the Legislature some years ago is such that I think it would be difficult, if not impossible, to explain with any chance of success the logical justification for the position taken by the Committee. I would therefore favor the amendment. Dr. Jenkins, you may close.

DR. JENKINS: First, the State Superintendent of Schools has considerable power to determine the kind of public school system we have, the appointments and

the like. Now entirely without reference to the current campaign, and I want to make that clear, it is very conceivable that we could at some time have in Maryland a Governor who, through his appointee, would enter this very undesirable element into the School System. The second summary statement is that on this issue there is among a large proportion of the citizens of the state and I would say almost unanimously among educators, the deepest and strongest feeling and I would appeal to the members of this Board who do not have strong feelings on the other side not to vote for this as Mrs. Bothe says simply for the consistency of having all officers report to the Governor.

THE CHAIRMAN: The question arises on the motion to amend paragraph (b) by inserting at the end of the first sentence after the words higher education the words and the State Superintendent Schools and to amend paragraph (c) by inserting in the second line after the word education the words the State Superintendent of Schools. The ef fect is to leave the appointment of the State Superintendent of Schools to

the, to be determined by law. All those in favor of the motion signify by a show of hands. Please hold your hands high enough so Mr. Brooks can count them all. Contrary? The motion is carried fifteen to six. Is there any other motion with respect to this section? Mr. Bond?

MR.BOND: I move the section be adopted as amended.

MR. BROOKS: Second.

THE CHAIRMAN: Mr. Gentry.

MR. GENTRY: I would like to move an amendment to the motion on the floor. I would move in Section (b) to delete the words starting with the words so in the fourth line and delete all the balance of that sentence so that the sentence will read the Governor shall appoint the members of all boards or commissions which serve as heads of principal departments. The term of office of such members shall be prescribed by law and then put a period.

THE CHAIRMAN: You accept the amendment, Mr. Bond?

MR. BOND: No, sir.

THE CHAIRMAN: Is there a second to the motion to amend?

DR. BURDETTE: I second.

THE CHAIRMAN: Discussion? Mr. Gentry.

MR. GENTRY: For many of the same reasons that were advanced before, particularly with regard to some of the boards that have been specifically mentioned. I have in mind the Board of Regents of the University of Maryland. I feel that it is well not to have a complete domination of these boards by any particular Governor but have rather their terms set by the Legislature and in some cases the Legislature could provide that the terms could be for a two-year period or four-year period, half the membership of the board rotate, could be whatever is determined but there are and has been brought out here, there are certain boards which should not be subject to domination of any particular Governor.

THE CHAIRMAN: Mr. Bond.

MR. BOND: I think it is a great over-

simplification of what Mrs. Bothe and Mr. Gentry have said. For the first years of my appointment to the State Board of Public Welfare, the incumbent Governor had little to say over the welfare policies involving millions of dollars, had little to say over the policies of the department during the first term of his office. This is true in many other boards that are brought to our attention and again you are taking away the power of a strong executive. I can only say we have gone into it thoroughly and we got this from many, many people. The chaos we have had, instead of chaos you have, I believe, and gosh, I am not one for the spoils system, I believe you have a more efficient system of government.

MR. DELLA: The reason I raised the question before was because the Workmen's Compensation Commission is termed as a commission under Paragraph (b). As far as our judicial operation, it was put under Paragraph (c). There is no conflict there, it is all right because this is a twelve-year term of office and would mean the Governor would not have an opportunity to make

an appointment in that field.

THE CHAIRMAN: I think Judge Adkins answer is correct, that the Workmen's Compensation Commission is a quasi-judicial agency under (c). Dr. Jenkins.

DR. JENKINS: I have a question. Do you know how many are present over at the Commission organized on this basis? At Morgan State College, for example, there are nine trustees, one appointed annually and this was undoubtedly adopted to prevent a single Governor from having a majority. What is the general practice?

JUDGE ADKINS: I don't think as much as you might imagine. The language specifically relates to boards which are heads of the agencies. The Board of Trustees is not the head of Morgan College, you are. The Board of Regents of the University of Maryland is not the head of the University of Maryland. The president is. We have it under research and do not have the results yet. It would affect certain things such as the Racing Commission. But it would not affect you.

MR. MILLER: The State Roads Commission.

JUDGE ADKINS: The State Roads Commission is already subject to action by the Governor.

THE CHAIRMAN: Could I ask you a question in view of an earlier comment you made inadvertantly, whether in (c), well, what I meant by that reference was I thought in answer to a question with respect to (c), you indicated that the Board of Regents, for instance, at the University of Maryland, would be covered and not the president, would there be anything inconsistent with the position taken by the Committee if (c) were amended to say president and governing boards, plural of institutes of higher education which wouldmean the Board of Regents at the University of Maryland, the Board at the State Colleges, the Board of Morgan College and other similar Boards would be appointed and removed as prescribed by law.

JUDGE ADKINS: I am going to answer that question somewhat obliquely by saying that in view of the Commission's role on the Superintendent of Schools, as Chairman of the Committee, I would have no objection to the amendment. I can poll the Committee.

THE CHAIRMAN: Mr. Gentry, would that change, meet your motion or would you want your motion to go beyond that?

MR. GENTRY: The only examples you mentioned are which, the Board of --

THE CHAIRMAN: It would take out of any possible operation of (b), and include under (c), governing boards of educational institutions, institutions of higher education. Itwould leave under (b), boards that are heads of departments of noneducational agencies.

JUDGE ADKINS: My advisor here tells me he thinks I was wrong that he thinks the Board of Regents would be covered in view of that and in view of the earlier Commission's votes, I would think that I at least would not object to, if Section (c) were amended as the Chairman suggests. I think it would be inconsistent in view of your earlier motion to do otherwise.

MR. GENTRY: That is the purpose I am striving for.

JUDGE ADKINS: So long as it is limited to Boards of Education, boards of institutions of learning. To accept the amendment otherwise would really gut this whole proposal.

THE CHAIRMAN: Is there any objection by anyone to the amendment of Paragraph (c) to insert after the word president the words and governing boards? If not, we will make the amendment. I take it,Mr. Gentry, that being the case you withdraw your motion?

MR. GENTRY: I do.

DR. BURDETTE: Did I hear the Chairman of the Committee say he wants more learning in institutes of higher education?

JUDGE ADKINS: I did, but I would use higher education as specified here.

MR. MILLER: How would it read?

THE CHAIRMAN: Presidents and governing boards of institutions of higher education, the State Superintendent of Schools, members of regulatory and quasi-judicial agencies and all other officers in the administrative service of the state shall be

appointed and maybe removed as prescribed by law. Mr. Power.

MR. POWER: I think this will necessitate a change in Subsection (b).

THE CHAIRMAN: What would be the change?

MR. POWER: The Governor shall appoint the members of all boards or commissions except the members of higher institutions.

THE CHAIRMAN: That would be a stylistic change. Mr. Gentry.

MR. GENTRY: Could I ask also that the word state precede institutions? Make it state institutions of higher education. I am sure that is what is implied.

THE CHAIRMAN: I really don't know. Are there not some schools, I don't know whether they would be classified as institutions of higher education which are really not state but which the governor makes the appointments on?

JUDGE ADKINS: Training schools.

MR. BOND: They are made by the court.

THE CHAIRMAN: McDonough School is a city agency created by will. I think it is a self-perpetuating board.

JUDGE ADKINS: The Governor appoints a number of the members of the Board of Governors of Washington College.

THE CHAIRMAN: That is what I meant, Mr. Gentry. I am not sure you want to limit it. Mrs. Bothe.

MRS. BOTHE: Mr. Chairman, I am simply not prepared to vote on this principle because I don't know the effect of it. I realize --

THE CHAIRMAN: On which principle?

MRS. BOTHE: The whole matter and I don't see much point in perennially amending sections (b) and (c) to exclude boards whether they be educational or of another nature.

THE CHAIRMAN: I don't understand what you mean when you say you are not prepared to vote on this principle.

MRS.BOTHE: I can't seem to get from the Committee just what the practical effect of this proposal would be. Judge Adkins only a moment ago expressed the belief that the Board of Regents of the University of Maryland would not have been affected by this proposal and subsequently stood corrected. I am not at all clear in my mind as to which or what agencies would be affected. There may be some of greater importance than the Board of Regents at the University of Maryland or the State Superintendent of Schools. They are the ones brought to mind and I don't see how the Commission can make an intelligent vote on the underlying principle involved here without knowing what the factual effects will be and simply by making various exceptions as we are now doing, I don't think meets the objection and I don't see voting on it this way.

THE CHAIRMAN: Mrs. Bothe, have you looked at the schedule that is furnished?

MRS. BOTHE: Yes, I have and sitting next to the reporter who told me not to look too far because I wouldn't find the answer.

MR. POWER: Mrs. Bothe was inquiring as to the facts of Subsection (b), that is one-half must be subject to appointment by the Governor upon taking office. This is not included in there. It is in some other material but we don't have it here this afternoon.

MRS. BOTHE: No one seems to know which agencies are regulatory and which are quasi-judicial and the whole concept seems to be extremely uncertain.

MR. BROOKS: On the other hand, you might add no matter what the present situation of agencies are under the reorganization of the executive branch it doesn't make a great deal of difference in that the effect could be totally different from anything proven on past experience.

THE CHAIRMAN: In other words, the present investigation being made of the executive department and the various agencies of the executive department is not going to be completed until considerably after we must have our report in, number one, and number two, Mr. Brooks' point even if you knew today what the situation would be, that might not be the situation after

that Committee's report is acted upon by the Legislature.

MRS. BOTHE: At least it wouldn't be stratified and nailed into the Constitution.

THE CHAIRMAN: I don't think this would stratify it. It is a question of principle involved and your question was that you didn't have the factual basis to enable you to decide the question. Mr. Bond.

MR. BOND: I have no question.

THE CHAIRMAN: Mr. Miller.

MR. MILLER: It might simplify some of this when you speak of the Governor's right to appoint members of the Board of Washington College or Westminster somewhere. That wouldn't be controlled by anything you put in the Constitution one way or the other, would it? Those appointments are made under the rules of the institution and are made in accordance with their rules, not the Constitution of Maryland. The Governor just has to do it.

THE CHAIRMAN: I would think that is correct as to private institutions governed by the charter or by the will creating the institution or whatever

it is. Is there any further discussion as to this section or any further motion? Mr. Haile.

MR. HAILE: I have a thought that the Governor should also appoint the members of all boards or commissions in the administrative services except regulatory or quasi-judicial agencies. Whether they serve as head of the principal departments or not, I have an idea that the Governor should have the right to make those appointments and not leave that to the Legislature. Has the Committee considered that?

JUDGE ADKINS: Well, I would say yes. We didn't feel it was necessary to provide that all boards should be appointed by the Governor. So boards are appointed by the department, many advisory boards, and boards of the penal institutions are appointed by the Department of Welfare all under regulations prescribed by the Legislature so we didn't think it necessary to require that all boards be appointed, when talking about the Governor. We are interested in what we call major departments shall be subject to gubernatorial control.

THE CHAIRMAN: Mr. Clagett.

MR. CLAGETT: Who is Frank T. Ralabate?

MR. BROOKS: He is a research assistant.

THE CHAIRMAN: Any further discussion?

MR. BROOKS: One thought, that is that this particular question is one of those that is most crucial to the objectives of this Commission that were stated back in September or October a year ago as to the desire to have a stronger state government, to have a more responsible state government, it was contemplated that each branch of the government should be strengthened, that the head of each of the branches should be given increased powers over the particular branch. Therefore, in the case of the executive for the Governor to be the master of his own house, he must have the powers to make those persons who are theoretically responsible to him in fact more than responsible and I think this is the crux of the strengthening provision of the executive article. It is really on the table for discussion at this point.

THE CHAIRMAN: Any further debate on the motion? If not, before Mr. Bond closes, I want to state

my position and I can do it very briefly because it merely echos what Mr. Brooks has said. This Commission on one of the very first reports presented to it by the Committee on the Executive Department endorsed the principle of a strong executive and the Committee has been working under that direction of the Commission for many months. This particular section is, as Mr. Brooks has pointed out, the keystone or the heart of that whole system. I, therefore, favor the motion which is to approve the section as amended. Mr. Bond, you want to close the debate?

DR. BURDETTE: How was it amended?

THE CHAIRMAN: In several particulars. Paragraph (a) has been amended by adding and the State Superintendent of Schools after higher education. Section (c) has been amended by adding and governing boards after the words president and adding the words State Superintendent of Schools after education. Mr. Bond.

MR.BOND: I will yield to the Chairman of the Committee, Judge Adkins.

JUDGE ADKINS: I think the gut issue has

been quite adequately stated. This is a prime requirement in our opinion if strong executive leadership is to be furnished in Maryland. I am sorry that we have not been able to answer Mrs. Bothe's questions relative to the practical effect. A major constitutional revision of this kind, cannot in my judgment ever be forecast with accuracy. We can only say that all the modern students of government that we have been able to check have recommended that whatever the practical effect is it will be a good one. I would hope that the Commission would see fit to adopt and pass the motion that has been presented.

THE CHAIRMAN: Ready for the question? The question arises on the motion to approve and adopt Section 12 as amended in Subsections (a) and (b). All in favor of the motion, please signify by a show of hands, (a) and (c). Before you take the vote, I omitted Dr. Burdette in stating the changes to mention the change in (b) that Professor Power said would have to be made merely to conform to (c).

The motion is lost. Judge Adkins, is there

Passed

anything further?

JUDGE ADKINS: The reporter calls my attention to the fact that there are some very technical changes that are set forth on Page 21. None of them at this late hour are sufficiently important to go over but we will do so if you want us to.

THE CHAIRMAN: Pursuant to action taken by the Commission heretofore as I understood it?

JUDGE ADKINS: Yes.

THE CHAIRMAN: And they are detailed on Pages 21 and 22 of the report. I don't think it is necessary to take the time to go over them.

JUDGE ADKINS: With that our report is concluded.

THE CHAIRMAN: Your report is but your labors are not. We now have 17 and a half golden minute. We will take up for consideration the report of the Committee on Legislative Department. This will be the Seventh Report of the Committee on Legislative Department.

DR. BARD: All right, we are considering lucky 7. We hope that this will be so. In general,

ladies and gentlemen, our report tomorrow morning will deal with these broad areas. First, in the Seventh Report you will notice that we have amended certain sections in complete compliance with requests which you have made. This covers the first five pages and the first paragraph on page six, so that in general tomorrow I shall read the underscored words in Sections 5, 7, 10, 13, 15, 16, and 17 which deal with requirements on the part of Commission action at the last meeting. Secondly, tomorrow we will deal with a highly important recommendation on the part of this Committee in respect to unicameralism versus bicameralism. I shall read our recommendation at this point and tomorrow we will move one way or another. By that majority of one vote, the Committee recommends to the Commission the adoption of a bicameral Legislature. The majority recognizes that the case for unicameralism is almost as strong but believes that Maryland should retain its bicameral Legislature. If the Committee should take action other than the Commission on bicameral Legislature, we have prepared a text --

THE CHAIRMAN: Dr. Bard, that we will have to act on anyhow because the Commission decided that should be presented as an alternate so that both systems will have to be acted on.

DR. BARD: I stand corrected. Finally, tomorrow we would like to take up this memo which I remind you is not a manifesto but sets forth the broad philosophy of the Committee, namely, that we believe that though the Commission has gone along with the Committee recommendations in respect to strengthening the hand of the Legislature there are six areas which we think make up a matrix that is highly important, that it all fits together and that on this sixth occasion we think we have been turned down in areas that are greatly significant and therefore we would like to present the possibility of looking at one or everyone, at one or another of these six series. We would like to look at all six before we finally close our Committee consideration . This then will make up our report tomorrow.

THE CHAIRMAN: Let me ask each member of

the Commission to do me the favor between now and tomorrow to read carefully the memo of the Commission and consider before we meet tomorrow morning what we should do with respect to these recommendations. I say that because of these considerations which give me a great deal of concern. So of the recommendations that the Committee wishes to resubmit have been before us three times,some have been before us twice. At the July meeting we had practically a full Commission. I have checked the votes on some of the matters that the Committee now wishes to have us reconsider and on one, I think the last one on the continuing Legislature, the recommendation was in opposition sixteen to nine. We have had at times this afternoon seventeen members of the Commission present. I would think that if we reconsidered and ended up with a vote, for instance, of nine to eight to reverse the action previously taken on a vote of sixteen to nine, it would be most unfortunate. We haven't any rules of procedure to enable us to cope with that. I ask you to consider these matters in your decision arriving at your decision

as to which way to vote and more particularly in, if the matter or any of them are reconsidered, I sincerely trust that we will not have ultimate decisions by a very narrow majority which will raise this question of whether the overruling action is inappropriate. I would further suggest regardless of which way the vote goes that they give serious consideration to including in extension of the report the differing recommendations. If we adhere to the present report, that the recommendations of the Committee be included either as alternate or certainly very fully spelled out in the report or if we adopt the recommendations of the Committee that the other recommendations be included in the report so that the full picture will be before the Convention. Our session, because of our commitments to many members must end at 12 o'clock. We are not going to be able to finish everything I had hoped to get over but I think it is imperative that we conclude the consideration of the report of the Committee on the Legislative Department and at least begin some further consideration of some

of the problems of the Committee on Political Subdivisions. I hope that you will make your debate and discussions tomorrow decisive. I do not think that we can possibly refer back to the Committee on Legislative Department any matter for reconsideration. We are at the end of the line.

THE CHAIRMAN: We will adjourn now until 9 in the morning.

CONSTITUTIONAL CONVENTION COMMISSION

Meeting of the Constitutional Convention Commission held on Sunday, October 16, 1966 at 9:00 a.m., at the Maryland Suite, Holiday Inn, Baltimore, Maryland.

PRESENT:

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Dr. Harry Bard, Member
Calhoun Bond, Esquire, Member
Mrs. Elsbeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Hal C. B. Clagett, Esquire, Member
Mr. Charles Della, Member
Mrs. Maurice P. (Leah S.) Freedlander, Member
Walter R. Haile, Esquire, Member
Stanford Hoff, Esquire, Member
John B. Howard, Esquire, Member
Dr. Martin D. Jenkins, Member
Honorable William Preston Lane, Jr., Member
Robert J. Martineau, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member
Melvin J. Sykes, Esquire, Member

ALSO PRESENT:

John C. Brooks, Esquire, Executive Director

Reported by:
A. A. Castiglione

THE CHAIRMAN: Now, we will resume consideration of the Seventh Report of the Committee on the Legislative Department. Dr. Bard.

DR. BARD: You remember yesterday I had indicated, Mr. Chairman, that there were three Roman Numerals, more or less, in terms of our presentation. I, A review of the recommendations that were made in terms of the Sixth Report and the changes which our Committee made thereof. II, A recommendation in terms of unicameralism versus bicameralism, and III, A discussion of our memorandum.

It shall be our procedure to tie in our memorandum with a discussion of the Sections themselves, so that you might see the significance of our memorandum. We move, then,in terms of Section 5, which was the first Section that we had been asked to change at the time of the last Meeting of the Commission.

You will recall that in this particular Section we had been asked to add some words and the words appear on Page 2, in Special Session. The General Assembly shall by law enact a plan. We had not had those words in the Sixth Document, and also two lines from the bottom of the Section,

The Supreme Court shall have original jurisdiction to review the districting and legislative apportionment of the State and, if it finds that the same are not constitutional--we added that -- to grant an appropriate relief. Those were the words added at the recommendation of the Commission.

THE CHAIRMAN: Any comment or questions? The next Section.

DR. BARD: We move then to Section 7, and we hear we will have --

THE CHAIRMAN: May I go back a moment, Dr. Bard? I have a note and should have asked you about it. In connection with Section 5, in the last sentence, you say, Upon timely petition, and I realize that that word was inserted after a discussion at a last Meeting, but I wonder if it isn't going to be just a trouble maker and wonder why we care whether there is any reference to the time when the petition is filed? Could this be left to the Supreme Court?

I mean by this, that if the Petition is too late for the Court to do anything effectively, I would say so, if it has taken effect, but the Court still thinks it could upset it, what is gained by saying timely petition?

DR. BARD: We certainly would go along with deleting the word, I would think. We added it because there were so many who felt that there ought to be some timing on this.

THE CHAIRMAN: Judge Adkins, I'm not sure, but I think you suggested, either you or Mr. Sykes suggested the word at the last Meeting, but I'm not sure.

MR. SYKES: No, I think I suggested it and I suggested it because there was a flat ten-day limitation and we didn't want to write the flat limitation in, but we didn't give any consideration to any limitation should be written in at all and I think you are right, that the best thing to do is not put it in at all.

THE CHAIRMAN: In other words, if no one acts and the plan is in effect for two years, it seems to me that it still would be possible for the Court to say it is not a proper plan.

MR. MILLER: Mr. Chairman, I don't remember the details, but one of the points brought up before had something to do with the possible assumption of jurisdiction by a Federal Court, there was some worry about that, which I

didn't quite follow, but that was one of the reasons they changed the ten days.

THE CHAIRMAN: That was connected with the ten days, yes. In the absence of objection --

MR. SCANLAN: Mr. Chairman, one thing you just said there causes me some concern. You said the plan can be in effect for two years and anyone can challenge it. I think it was the thinking of the Committee, since we are putting into the Constitution a grant of jurisdiction and the procedure by which a new redistricting or reapportionment can be tested, I certainly, I better speak only for myself, from discussions of the Committee, I thought we were of the view there ought to be a limitation, that the people just couldn't sit back and later come in to upset a plan that they could have had an opportunity to upset promptly.

That, I think, is one of the reasons we originally had a flat limitation of time. Then, when that was taken out and the word, timely, substituted, I wasn't at that Meeting, but I have no objection to timely. The point I'm trying to make is I don't think it should be left completely

loose. I think there should be some manifestations to the challenge to the new statute to be timely.

THE CHAIRMAN: Great is the power of the advocate. I thought you would have argued just to the contrary, because that argument would have completely defeated you in your fair representation case, because it certainly was not filed within any particular time. The plan for apportionment had been in effect for a long, long time.

MR. SCANLAN: That is correct, but this is a new system we're starting here.

THE CHAIRMAN: Dr. Bard?

MR. MILLER: Of course, it seems to me, Mr. Chairman, that timely doesn't mean anything much.

THE CHAIRMAN: Let me interrupt a minute. There was a suggestion to the Chair there ought to be a motion.

DR. BARD: Before we move, may I remind you that in our Sixth minutes we had, Upon petition of any eligible voter filed no later than ten days after the enactment of a plan or after the final date for action set forth above, whichever first occurs, and the Commission felt that this was a rather involved statement and this is why we changed

it to timely.

JUDGE ADKINS: To get to the matter, I move the word, timely, be stricken.

THE CHAIRMAN: Is there a second?

MR. CLAGETT: Seconded.

THE CHAIRMAN: Any further discussion? Are you ready for the question? The question arises on the motion to strike the word, timely, before the word, petition, in the last line of this Section. All in favor signify by saying aye. Not in favor, no. The ayes seem to have it. The ayes have it.

Now, I had another comment with reference to that Section and I think this applies in one of the other reports. Did we not decide when we use the term districting, we would say congressional districting and when we used apportionment, we would say apportionment?

DR. BARD: I don't think we did. That came up before and I believe we decided not to.

MR. BROOKS: That is my recollection, too.

THE CHAIRMAN: Mr. Della?

MR. DELLA: If the Legislature would draft a plan

of redistricting and it would not meet with the consensus of opinion of a number of voters, as such, what recourse would they have to upset the redistricting plan? Would that have to stay in effect until the next General Assembly?

THE CHAIRMAN: Dr. Bard?

DR. BARD: I think so. Didn't we pass some resolution in respect to petitioning, in regard to reapportionment or districting?

MR. BROOKS: Yes.

DR. BARD: I think the answer is yes.

THE CHAIRMAN: It's not subject to referendum under other action of the Commission. Any further comment or question as to Section 5? Mr. Scanlan.

MR. SCANLAN: I think the Chair's suggestion about including the word, congressional, when you use the word, districting, that you use the word, legislative apportionment is a good one and I think we need to do it in two places --

MR. BROOKS: I believe Dr. Winslow pointed out in the last Meeting that you have both districting and apportionment in regard to just the Legislature.

MR. SCANLAN: I didn't catch that.

THE CHAIRMAN: You have both districting and apportionment with reference to the Legislature.

MR. SCANLAN: Then do we mean in Section 5, when we say the Governor shall present a plan of districting and legislative apportionment, that we're speaking only then of a redistricting and reapportionment of the Legislature or are we also talking of a congressional districting plan?

THE CHAIRMAN: Both, but districting means, as Mr. Brooks points out, or could mean congressional districting or legislative districting, both.

MR. SCANLAN: Yes, but I think we really should use them as terms of art, and even though technically, in a broad political science sense, it can mean legislative districts. I wonder if it's wise to use it in two senses or mean it in two senses in the Constitution?

MR. MILLER: It's still dependent on the latest census report, is it not, and the fact that there are two different kinds of districts, it would seem to me that the word would cover both.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: I guess I had not thought this to include congressional redistricting and, if that is included in this Section, I think we have to make separate reference to that, congressional redistricting, as such.

THE CHAIRMAN: It certainly was intended to be included. The whole discussion indicated that, I think.

MR. SAYRE: If that is included, I think we have to make separate reference, because you could have redistricting of a legislative district just to keep a balance of the reapportionment and/or you can do the reverse.

MR. BROOKS: It depends on the plan the Governor presents.

MR. SCANLAN: I understand the phrase, A plan of districting and legislative apportionment, to mean plan covering congressional districting and also a reapportionment of the Legislature. The latter, of course, would also involve plans in the creation of new legislative districts.

DR. BARD: Right.

MR. SCANLAN: But it isn't the same type of districting you are talking about when you say a plan of

districting.

DR. BARD: How else would you say it?

MR. SCANLON: I would say a plan of congressional districting and legislative apportionment. You are using the word, district, now, in a different sense and it's embraced in the larger function of apportionment. When you apportion the Legislature, naturally, you have to have districts, but to talk about that in the same sense you are talking about congressional redistricting, I think, is confusing.

Maybe I've been too close to this and --

THE CHAIRMAN: Could you meet both objections if you said, it's a little more cumbersome, A plan of congressional districting and legislative districting or apportionment?

MR. MARTINEAU: Or legislative apportionment and districting.

MR. CLAGETT: Couldn't you simply say, A plan of congressional and legislative districting and apportionment of the General Assembly?

MR. SCANLAN: Maybe it's just because --

THE CHAIRMAN: Well, let me do this. I don't want to take the time on a matter of style, but I think it's important to have the matter, the principle fairly understood and then let the Committee on Style wrestle with it. I understand that it is the position of this Commission that the plan referred to in this Section is a plan that could embrace congressional districting, legislative districting, legislative apportionment.

Is there any dissent from that? Then the Committee on Style could wrestle with it.

I'd like, however, to ask another question with reference to the same matter, so the Committee on Style will have no uncertainty.

This sentence refers to a plan for districting and legislative apportionment, as though a plan had to embrace all of these things. I take it that that is not necessarily true?

DR. BARD: No, it is not true.

MR.SCANLAN: Hopefully, it wouldn't be true. Hopefully, there would be at least two plans.

THE CHAIRMAN: So, this should be phrased or could

be phrased to clarify that also.

MR. BROOKS: A single plan can present two districting plans within a single plan.

DR. BARD: Yes, but there could be two and there could be three, and this is why, I think, having the Style Committee look at it, so it could be one or the other, is in order.

MR. MILLER: Won't it be plans, in any case, because wouldn't the Governor have to submit -- they are on entirely different principles -- I mean, they are on the same principles, of course, but entirely different situations.

Maryland is alloted X number of congressmen and it's got to be redistricted to fit that number, whether there are more or less. Also, we have population changes within our Legislature, and it seems to me that there might be, if Maryland picked up or lost a congressman, there might be plans rather than plan.

THE CHAIRMAN: Well, I think this is true, but this we can leave to the Style Committee. I understand my note and I don't think there's any trouble.

DR. BARD: Let us move now to Section 7. First I'd like to call your attention to the fact that at the last Commission Meeting the Committee was asked to be specific in regard to the date. In our sixth draft, Section 7 read, The General Assembly may continue its session, and we have now included the words, General Assembly shall convene. We give the actual date of convening, on the third Wednesday of January of each year, and unless otherwise provided by law. These were the words that we were asked to include.

Now, this Seventh Section marks the first illustration of the kind of recommendations that we would like to make for your observation. You will recall that yesterday I said that our Committee was quite disturbed about the fact that the heart of our main thrust which was in terms of giving more power to the Legislature had been disturbed by actions in terms of six movements which are herein stated.

I would like to say, to be fair in this report, too, that on other accounts, the Commission had followed along with our recommendations in respect to strengthening the hands of the Legislature, but in terms of these six

ideas, we felt there was considerable damage and we hope the Commission will further look at these.

In Section 7, there are two points, the first two points of our memorandum. The first point is that the Legislature should be a continuing body. I think I'm right, Mr. Chairman, in saying that the first time we submitted this idea, it passed. The second time, it failed, and was there a third time on that one?

MR. BROOKS: Yes.

DR. BARD: And the third time on this one, it failed, but the first time it did pass.

Now, the second point of our memorandum deals with the Legislature shall have the power to convene itself. We feel even more strongly on this point. We would like to add beyond the one dealing with the Governor may convene the General Assembly at special session at any time, but the Legislature may call itself into session upon three-fifths vote of its body.

We feel there are any number of necessities in this regard and it would give the power which the Legislature should have. The requirement that there be three-fifths or

two-thirds, which fraction we ultimately decide --

MR. MILLER: Of each House.

DR. BARD: That's correct, of each house.

THE CHAIRMAN: Now, Dr. Bard, let me interrupt. This embodies a motion or request to reconsider two separate matters, both pertaining to this Section, and I think under our rules, since it is requested by the Committee, it will be submitted to those present without debate and if the motion is granted, then we would debate other matters.

The first question is whether we shall reconsider the decision of the Commission on the issue of whether the Legislature shall be a continuing body or whether it shall convene for a stated number of days each year. This recommendation was approved by the Commission in June. It was rejected by a vote of 10 to 13 in July. It was not discussed in August. It was rejected in September. I do not have the vote because we do not have the minutes. The question on reconsideration is submitted without debate.

All those in favor of reconsideration of this question at this time signify by a show of hands. Contrary? The motion is carried nine to seven.

Now, Dr. Bard, do you want to move your Amendment?

DR. BARD: I would thus move that we add into this document the statement that the General Assembly shall be a continuing body. The General Assembly may continue its session so long as in its judgment the public interest may require. This is the way it read before.

THE CHAIRMAN: Is there a second?

MR. SAYRE: Second.

THE CHAIRMAN: Any discussion?

MR. MARTINEAU: I'd like to ask a question.

THE CHAIRMAN: Mr. Martineau.

MR. MARTINEAU: Would you repeat that again? What is your recommendation?

DR. BARD: We include within this document, and perhaps I ought to -- Al, do you have the exact wording you submitted some time ago?

MR. MARTINEAU: I thought it was, as shall be provided by law, was your original recommendation.

DR. BARD: That's right, it closed with, There shall be provided by law. It stated that they would have

the right to actually designate at the beginning of the term how long --

MR. MARTINEAU: Or pass a law for --

DR. BARD: For that particular session.

MR. MARTINEAU: No, for every session. This, as I recall, was one of the points that gained a lot of favor, that they wouldn't go into each session without having any idea when they would terminate, that they would know --

DR. BARD: Here it is. The General Assembly shall be a continuous body meeting in regular annual sessions commencing on the third Wednesday of January every year and terminating as provided by law.

MR. MARTINEAU: Right. Is that your recommendation?

DR. BARD: That's my recommendation, as read now.

THE CHAIRMAN: That was changed to read,continuing body, instead of, continuous.

DR. BARD: Continuing body, that's correct.

THE CHAIRMAN: Any further discussion, Mr. Martineau?

MR. MARTINEAU: No.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I have already expressed my views on this, on what I think is important. There is one thing that has developed since we talked about it before. We've already got a provision now in the event of death and certain situations and so on, the Legislature will call itself together.

I fail to see, when the Governor calls a special session, why they have to go through the formality of re-organizing or if there is an emergency, I think these words merely mean that the machinery having been set up at the start of the session, they will continue unless it's changed, which the Legislature can do, each House can change anything, but when they are called together or if there is a special emergency, the machinery is already in operation. The committees are appointed. There is no need of having a reorganization which, at the present time, they usually start off by just approving everything they have done before, and where could it hurt anything? Where could it possibly hurt anything to give them that power?

JUDGE ADKINS: Am I to understand that this

Commission can now reverse itself on nine votes, when it has twice rejected this by a vote of ten or better?

THE CHAIRMAN: This is the problem that I mentioned yesterday evening and I suppose theoretically it could happen. I think the Commission ought to be exceedingly careful about taking any such action.

MR. MILLER: I would like to make a suggestion, and I think we've got to be fair about it. I think that any action we take, if anyone of these provisions are changed again, it seems to me it ought to be with the proviso that every Member be given an opportunity to vote by ballot or send it into the Secretary, or something, because I think we should have everybody have their say, whether they happen to be here or not.

THE CHAIRMAN: That's not practical, because we cannot conduct mail ballots and the Members wouldn't be present here for discussion.

MR. DELLA: Mr. Chairman, as I understand, a continuing session would be when they convene the session the third Wednesday of January, they would stay in session until their work is completed. Now, would this preclude any

operation by the Legislature itself of recessing, say after a month and then coming back into session again, say 30 days after that?

THE CHAIRMAN: I would think not.

MR. DELLA: It would make this possible, then?

THE CHAIRMAN: I would think so.

DR. BARD: If their law said so.

MR. SAYRE: Their own law said so.

THE CHAIRMAN: Dr. Jenkins?

DR. JENKINS: With the problems of the Congress, as we all know, appropriation acts may long be deferred after the beginning of a particular fiscal year, do you propose any protection here on the continuing session that the appropriation bills must be passed at a certain time?

DR. BARD: We've discussed that on a number of occasions. Unfortunately, I was not present, in terms of that section on finance.

THE CHAIRMAN: On the report that the Second Committee on Finance, as originally presented, this proposal now presented before you would wreak havoc, because it was geared to the end of the session. However, a change

was suggested yesterday and accepted by the Commission which would tie the deadline for action on the budget to the beginning of the session or a stated number of days after the beginning of a session. Mr. Scanlan?

MR. SCANLAN: I certainly am aware of what might appear to be, in fairness to permitting us to retread this ground. Let me say this, though. It is entirely possible that the Members of this Committee did not appreciate how they had less strengthened the Legislature by the proposals previously adopted, in relation to what they had done just yesterday to the Executive Branch. A very broad, indeed, and radical power was approved by this Commission, so the Governor could put his own House together and run it. We passed a very fine and moderate judiciary order, making the Judiciary very strong in this State, indeed.

So, this is just to give you one more look, to see whether in relation to a strong new Executive in the Constitution and in relation to a strong new Judiciary in the Constitution, you don't want the Legislature to have the power to run its own house, that you don't trust the Legislature to call itself in session when business demands

them and to go home when it doesn't demand them. I, for one, trust them.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: I would like to simply make this comment, that at this late date, this means a major rewrite of at least two Reports and I think more on what this Commission has acted. This would have to be largely rewritten, the Budget Report will have to be rewritten.

I simply would like to ask if the Committee on the Legislature would like to take on those responsibilities? We had written this Report after a discussion on this problem and I personally take a dim view of doing this all over.

MR. CLAGETT: I would like to ask Dr. Bard, since we are doing what we are now six times, or possibly more, over, whether there is any priority in the thinking of the Committee among those six suggested problems?

DR. BARD: Yes, there is, and perhaps I'm speaking as an individual here. I, myself, would feel more strongly in terms of the next proposal in respect to Section 7, and I'm glad that you have asked the question, namely, that concerned with the authority and right of the

Legislature to convene itself.

In this respect, incidentally, the last time we voted on the question, there was an absolute tie, and in answer to Judge Adkins' point, in this respect, to my knowledge, and the Chairman might voice an opinion here, there would be no requirement other than an additional sentence in this one place and no other place.

My own feeling would be that in respect to Section 7, which is before us now, I would feel more strongly in regard to the second proposal which we will make by motion, too, where there has been no vote, other than one tie vote, than I would in regard to this one.

However, I do feel that certainly in theory and in terms of argument and actuality, a Legislature faced with a Constitutional deadline for adjournment may have a spirit of action, but forced action, as we state here, is often precipitous and unwise. So, I would tend to think that this one, I would not have a strong feeling about this one as I would about the other, also in terms of what this would do to past action.

THE CHAIRMAN: Any other debate? Mr. Sayre?

MR. SAYRE: If on the second session, and I'm asking all the Members of the Committee, we had a provision wherein the Legislature after 70 days voted by, say, three-fifths or two-thirds to extend its session for a period of days not to exceed a certain number and it had the right to do that all the time, would not that gain the same benefit as a continuing session, with set limitations each time it so voted to extend itself?

DR. BARD: I'd say in part, and this is why I feel that way about our second proposal.

THE CHAIRMAN: Mr. Martineau, I think you are correct that you only asked a question before. You may have the floor.

MR. MARTINEAU: I would like to make the comment, this summer I read a newspaper release, I think it was put out by the Council on State Governments, it was a story about the pending Constitutional Amendments in the various states to change the length of the session of the Legislature and, as I recall, virtually every state in which there was a Constitutional limit on the session of the Legislature had a pending Constitutional Amendment to change it, and I

think the article went on to state how this happens year after year after year, that wherever there is a Constitutional limitation on the session of the Legislature, there are continuous Constitutional Amendments changing these terms around and the terms that were recited in there vary, of course, from state to state; but the one thing that was clear from the article was that no matter what figure was chosen, there were Constitutional Amendments pending to change them, and I think that only points up the weakness of putting in such a limitation in the Constitution.

THE CHAIRMAN: Any further discussion? Mr. Miller, you have spoken on the question, so has Mr. Della. Any further discussion? Mr. Sykes?

MR. SYKES: I would like to ask a question. I wasn't on the Commission when any of this previous action was taken. I was impressed just now by Congressman Miller's point that the organization of the Legislature certainly ought to carry over into special sessions and maybe the following year over a specified period.

What I wanted to ask was whether the third recommendation of the Legislative Committee that the Legislature

should have a two-year term would, if inserted in the Constitution, gain all the benefits of the continuation of the organization of the Legislature or whether there is something in the first recommendation that the Legislature be a continuing body which would give more in the way of advantages -- I mean which would make any difference in the continuation of the organization of the Legislature?

THE CHAIRMAN: Mr. Sykes, let me comment on one thing. I listened to your question and I think perhaps Congressman Miller was wrong. When the Legislature organizes for a regular session, that organization continues through any special session that may be called in that year. You don't reorganize the Legislature to elect new presiding officers, at least under the present rules, every time there is a special session.

MR. SYKES: Well, that's one thing I wanted to know. The other is, the Committee also recommended that this be carried over for two years, but you don't need to make the Legislature a continuing body, do you, in order to have the carry-over even for two years? You could do that by special provision, is that correct?

THE CHAIRMAN: That's correct.

MR. MILLER: I was not going to speak. I wanted to answer a question. As a Member of the Committee, the Chair asked what we thought about the relative Report. Speaking only for myself, the main principle I want to see adopted, if we can do it, is the right of the Legislature of its own initiative to have a session, whether it's special or general and, from that point of view, this second proposition, which would not involve any extra work for anybody, if we could just have it in here that the Legislature was its own boss to the extent that if three-fifths of the Members of each House wanted to have a session, they could have it, I would be satisfied about this other, although I do think this is a better way.

THE CHAIRMAN: Any further discussion? Mr. Hoff?

MR. HOFF: Mr. Chairman, according to my notes, and I may be wrong, at our July 18th Meeting, in consideration of the Fourth Report of the Committee on Legislative Department, we defeated the continuous session proposition by a vote of 16 to 9.

THE CHAIRMAN: 10 to 13 is what I have in the

minutes. There was another proposition, Senator Hoff, which was passed by a vote of 16 to 9, which followed that, and that was that the Legislative session should be 70 days, but the precise point here on the continuing session was a separate vote. There were two matters both connected with this Section and both closely tied together.

MR. HOFF: I would suggest, knowing how some of the absent Members feel about this proposition, and I know how I feel about it, and Judge Adkins, this question is bound to come up again when there is a larger representation of the Committee present; I'm just wondering, by passage of this proposition today, if we are not imposing on some of our other Committees a terrific burden of rewriting that will simply have to be undone again at a later date when this proposition is voted on.

THE CHAIRMAN: Any further debate? Before Dr. Bard proposes, I would like to state my position. First, on the matter of substance, I would agree that logic would support the position of the Committee and initially I was one of those voting to approve the principle of the continuing Legislature. However, I think this is one of those

situations where the practicalities outweigh the logic.

I think that the necessity, the desirability of having a fixed date in the year when laws become effective, the necessity for business, the Courts, lawyers and the populace generally to know when the Legislature will be in session, not from day to day, but to know in advance and what was referred to in earlier debate as the upsetting effect of the Legislative Section are all very practical considerations which to me lead away from the idea of the continuing session.

On the other hand, I feel that, in line with our general principle, the Legislature ought to be made as independent as possible and I would, therefore, favor and did vote in favor of a provision allowing the Legislature by an extraordinary vote to call itself into session.

However, as this matter is now presented, I think it would be well nigh disastrous for this Commission by a vote today to approve the idea of a continuing session. I do not think it is a simple Amendment, of simply rephrasing this one Section. I think we do have to go over all of the other Articles, because there are many cross references in

them, regular sessions, special sessions of the Legislature and numerous other provisions that would make it necessary to go over it with a fine tooth comb.

In addition, I would feel that it was very unfortunate if, in the light of the previous votes, the one of -- I don't know the September vote, but 10 to 13, that is, rejected by 13 Members on one occasion and then the very closely allied proposition that the Legislative session be limited to 70 days passed by 16 to 9, if by a vote of any number of Members today less than that, either of those majorities, we reverse that position.

We are confronted with the necessity of finishing our task and it seems to me that if we allow ourselves to reconsider and change our position here, we necessarily must accord that privilege at the next Meeting of the Commission to the other Members.

I would personally feel that the previous action of the Commission on this issue should stand and that the report should carry in its body the text of an alternate provision providing for a continuing session, so that the Convention when it debates the matter anew, if it wished

to, could adopt the principle of a continuing session.

GOVERNOR LANE: Mr. Chairman, I think it would be most unfortunate now for us to clash with what we have already decided, knowing that would wreak more havoc. To speak briefly, I agree with the Chairman, I agree with the views he expressed, but I do think that the Legislature should have the power under a certain vote to call itself into session.

THE CHAIRMAN: Dr. Bard?

DR. BARD: Mr. Chairman, I am deeply impressed with the logic of your presentation and I would make this point about the procedure. It is too bad we've come to this wisdom about a continuing session rather late in life, but I find this is true in life with me, as an individual Member, as well as the Commission. I, therefore, withdraw the motion with the strong appeal that we move favorably in terms of the second motion which concerns itself with the power to convene. I make this move with the hope that I interpret properly the views of the Committee as a whole, and I believe I do. Would that not be true?

MR. MILLER: That's mine.

THE CHAIRMAN: Mrs. Bothe, you and Mr. Sykes seconded the motion. Do you agree to withdraw?

MR. SYKES: Yes.

THE CHAIRMAN: The motion is withdrawn.

MR. BOTHE: I don't believe I -- it's the way I intended to vote.

THE CHAIRMAN: I'm sorry, I thought you did. Who seconded the motion?

MR. SCANLAN: I seconded the motion.

THE CHAIRMAN: Do you consent to it?

MR. SCANLAN: By all means. I'm glad the Chairman ran out on us, because we were just about to run out on him.

DR. BARD: The Chairman interpreted the Committee's views properly.

MR. CLAGETT: I believe that means they are in accord.

DR. BARD: I would move that an additional sentence be added in Section 7 permitting --

THE CHAIRMAN: First you move to reconsider the extra --

DR. BARD: We better. Reconsider the action of a tie vote in connection with this proposal, is that it?

THE CHAIRMAN: No, there is more than one action. The motion, I would take it, is to reconsider the previous actions of the Commission in rejecting the idea that the Legislature could call itself into special session by an extraordinary vote.

MRS. FREEDLANDER: I second that motion, Mr. Chairman.

THE CHAIRMAN: That is not debatable. The proposition heretofore presented was that the Legislature could call itself into special session on the written request of three-fifths of the Members of each House. That was rejected at the August Meeting by a tie vote. It was again rejected in September. I do not have the minutes and do not know the vote. Now, the motion is not debatable.

All those in favor of reconsidering that vote, please signify by a show of hands. Contrary? The motion is carried, 12 to five.

Dr. Bard, do you want to now move to add a sentence, I believe?

DR. BARD: I'm going to ask Congressman Miller to word that, because he originally worded it?

MR. MILLER: Would that be what we were just talking about?

DR. BARD: Yes. The Legislature may call itself into session. It's in Section 7, Page 3. You were the one who introduced it originally.

THE CHAIRMAN: The language that was presented in the motion in August was that the following language be added to Section 7, and this would be at the end of the last sentence: And must convene the General Assembly in special session upon the written request of three-fifths of the Members of each House thereof. So that the last sentence will read, The Governor may convene the General Assembly in special session at any time and must convene the General Assembly in special session upon the written agreement of three-fifths of the Members thereof. Is that the motion?

MR. MILLER: Yes.

DR. BARD: I think we talked about the importance of this Section on a number of occasions. Indeed, the last sessions make it perfectly clear that unless the General

Assembly has this particular power, it cannot carry out some of the activities we discussed.

THE CHAIRMAN: Any further discussion? Ready for the question?

MR. SAYRE: I have a question. The way this motion reads is that you have to have three-fifths petitioning the Governor to reconvene, is that right?

MR. MILLER: Three-fifths of the Members of each House and then he must call it.

MR. SAYRE: Well, suppose that we meet 30 days. I'm just thinking wouldn't it be easier for the Members to vote by three-fifths to extend or re-extend for additional periods not to exceed 30 days each?

MR. MILLER: The unfortunate part about all of that is, as Judge Adkins has pointed out, this would be a special session. The only thing this would do, as I see it, is to change what we have already begun, to the extent that in addition to the Governor wanting to call it, he might be made to call it, and that's the only thing we're adding to the whole Constitution and I think it should be there and it's very important.

MR. SAYRE: All right.

THE CHAIRMAN: Any further discussion, Judge Adkins?

JUDGE ADKINS: I have to make the same point I made before, that I think this means each of the major Reports we adopted here have to be scanned and reviewed to make sure language would have to be changed. Language in my Report would have to be changed. The Executive veto is tied in and will have to be rewritten. That will have to be done.

THE CHAIRMAN: I don't follow when you say the Executive veto is tied to two Sections?

JUDGE ADKINS: It's tied to the concept of the limited session. Now, if you give the Legislature the power to convene itself, the only thing you are doing is giving them a power to adopt a continuous session.

THE CHAIRMAN: No, this would be a special session and,therefore, I would think would tie in with the language of your Executive Department Report, would it not?

JUDGE ADKINS: I don't think it will, but I can't answer that without examining it in detail.

MR. MILLER: It would seem to me, Dale, that your Report provides for special session. The only thing this adds is that instead of the Governor calling it for himself, he calls it because he has received a petition, and I can't see how it would change any other Section that we've adopted. It's just another special session, that's all it is.

THE CHAIRMAN: Any further discussion? Are you ready for the question?

The question arises on the motion to add to the last sentence of Section 7, the phrase, And must convene the General Assembly in special session upon the written request of three-fifths of the Members of each House thereof. All those in favor, please signify by a show of hands. Contrary? The motion is carried 12 to five.

Now, still on Section 7.

DR. BARD: Still on Section 7. We have one more point and, herein, we don't feel as strongly. However, we would like to call your attention to this particular gap, as we see it, and that's point 3. The legislature should have a two-year term. The legislature, when convened,

should continue its organizational existence for two years. A two-year term for the legislature would permit the initial organization of the two houses to carry over to the second session. This would eliminate the need to organize the second session when it convenes and would permit the second session to commence its work promptly at the point where the first session left off.

I might add here that this particular recommendation was tied in to Recommendation 4, which would need to be written in, the one dealing with staggered terms. If you turn your page, we have recommended on another occasion that, One-half of the members of the legislature should be elected each two years. This would ensure a continuity of experience that would facilitate careful consideration of measures. Another major benefit, made vivid by the recent primary, as was clear when the ballot was so long that in some districts there was something like 80 names.

You would only have then one-half of those running for the House of Delegates coming up every two years and --

THE CHAIRMAN: Dr. Bard, may I interrupt? It

seems to me that we perhaps ought to consider Recommendation 4 before 3, because 3 has no pertinence if we don't accept 4.

DR. BARD: That's right.

THE CHAIRMAN: At the present time, the Legislature is elected on a four-year basis and organized on a four-year basis.

DR. BARD: That's correct, the two go together, and actually four would be written into Section 6, if we adopted it, and if you turn in your document to --

THE CHAIRMAN: Well, first, before you do that, this would be a motion to reconsider the action by which the Commission heretofore decided against having a provision for staggered terms for the Members of the Legislature.

DR. BARD: Before I make this motion, I would like to say that I believe firmly that in the case of these two items, the same point that was made earlier about the fact that we do not have a complete body here would hold true in respect to these two items. It was our purpose, the purpose of the Committee, to not necessarily move reconsideration in respect to each of these items, but to

point to the Committee that these were serious gaps, as we saw them, and in this case, I am not prepared to move, in terms of 3 or 4, but rather to point to the Committee as a whole that strong statements with reference to 3 and 4 need to be made either as alternative statements or as recommendations for review to the Convention rather than to this body.

THE CHAIRMAN: All right. Then, we'll go back again to Section 7.

DR. BARD: Now, perhaps another Member of the Committee may choose to make a motion in this respect.

THE CHAIRMAN: Mrs. Bothe?

MRS. BOTHE: Was there a vote on this? I don't recall when it was debated before.

THE CHAIRMAN: There is no motion before the Commission. The question of staggered terms was rejected in June by a vote of 15 to six. It was not considered in July or August. It was rejected in September. I do not have the vote.

DR. BARD: On the other one, Mr. Chairman, we never did have an extended debate on this --

THE CHAIRMAN: Let's go back to Section 7, before we move on to the other point.

DR. BARD: In going to Section 7, I would say that we have no other recommendation in this respect, unless a Member of this Commission feels that we ought to consider these two points together. We're merely pointing to the importance of calling these two issues to the attention of the Convention as a whole at this time.

THE CHAIRMAN: Mr. Brooks corrects me, that the fourth point was not discussed in September. It was rejected, as I indicated, by a vote of 15 to six, in June. All right, further consideration of Section 7, Dr. Bard?

DR. BARD: I have no other point.

THE CHAIRMAN: I would suggest, at the end of the first line, after the word, convene, that we add the words, in regular session, because we in other Articles refer to special sessions and regular sessions and this would then identify this as the regular session. Would there be any objection?

DR. BARD: I don't believe so.

THE CHAIRMAN: Any objection from anyone to

adding the words, in regular session, at the end of the first line, so it will read, The General Assembly shall convene in regular sessions? If not, it is so ordered.

Now, I have another question, Dr. Bard, two questions. Is it intended by the Committee that the proviso in the first sentence is a limitation on the Legislature to the extent that it can only extend its session once?

DR. BARD: For a period not longer than 70 days, are you referring to that?

THE CHAIRMAN: Not longer than 30 days.

DR. BARD: The second sentence, provided, however, that by two-thirds -- this was the feeling that I had, yes.

THE CHAIRMAN: Did you mean that it could act only once? In other words, if it extended its session for ten days, could it act a second time and have another ten days and a third time and have another ten days, so long as the total extensions did not exceed 30, or was it the intention that the Legislature could make an extension once and once only?

DR. BARD: Well, my own thought would be the

former, that it could extend it to 30, if it felt the need and that, of course, goes back to our original belief of the Committee in a continuing session. However, there has been no interpretation, to my knowledge, by the Commission as a whole, Mr. Chairman.

THE CHAIRMAN: I think it's important to understand what the Commission desires on this point, because I think the language needs clarification and the Committee on Style ought to have the clarification.

MR. SCANLAN: I think I was the author of that. I certainly intended it would be for one period, which would be no longer than 30 days, but it could be shorter.

THE CHAIRMAN: In other words, if the Legislature approached the end of its 70-day session, it would have to make up its mind it was going to extend for ten or 20 or 30 days and, whatever it did, it did once.

MR. SCANLAN: Right.

MR. MILLER: That would have to do with the regular session and not anything to do with this other provision.

THE CHAIRMAN: Right. Any dissent from that

view? Then here is where I think the Committee on Style could improve the language to make it clear.

Any further comment with reference to Section 7? If not, we move to Section 10.

DR. BARD: Section 10 took care of a requirement that we add, we make the revision and include, Following more than 90 days after the vacancy occurs.

THE CHAIRMAN: I'm not sure your comment is entirely clear, Dr. Bard. I'm thinking of the record now and not the Members present.

DR. BARD: In our Sixth Report, Section 10 read as follows: Any vacancy in the General Assembly shall be filled by appointment by the Governor, provided, however, that a Party Member shall be succeeded by Members of the same Party and provided further that person so appointed shall serve only until the next biennial General Election, at which time, any remaining portion of the unexpired term shall be filled by election; and there was the desire that we clarify at which point this would take place and then we added these words, at the recommendation of the Commission, Following more than 90 days after the vacancy occurs.

THE CHAIRMAN: Mr. Martineau.

MR. MARTINEAU: Doctor, is it your thought that if there is an independent who is to be replaced that the Governor could pick a person of any Party?

DR. BARD: This was our Committee feeling, that the Governor had a perfect right to pick a person of any Party or an independent, if he so desired, if a vacancy by an independent occurred.

MR. MARTINEAU: My recollection was, and it might be totally incorrect, that we voted last time to provide that the independent was to be succeeded by an independent. Maybe my recollection is wrong.

DR. BARD: I don't think you are right on that.

THE CHAIRMAN: I won't be positive, but my recollection of the discussion was that if the vacancy occurred as a result of the resignation and death of a person who was a Member of a Party, he had to be succeeded by a Member of that Party, but I did not understand that the Governor would have to pick an independent to succeed an independent. Mr. Hoff?

MR. HOFF: Did we not decide that the Members

would retain their Membership in the General Assembly until the beginning of the next session?

THE CHAIRMAN: That's correct.

MR. HOFF: Well, this would have the effect of terminating the term of the person appointed, let's say, in the third year of the term at the next General Election and not at the time when the other Member's term expired.

THE CHAIRMAN: You are quite right. Do you follow his point, Dr. Bard?

DR. BARD: Not fully, no.

THE CHAIRMAN: If we made an Amendment to similar language in another Section so that the terms of the Members of the Legislature did not expire with the election of their successor, but continued until the convening of the next regular session, so that if a new Member is elected in November, he takes office in January, but the hold-overs carry on from November to January.

DR. BARD: Right.

THE CHAIRMAN: Mr. Hoff points out that with reference to this successor, we have not done that. You have used the language of the old Section and his term

would, therefore, expire with the election of his successor and you would have a gap.

MR. MILLER: I would suggest, Mr. Chairman, that that can be corrected, and it is a good point, by inserting the third Wednesday of the January following.

THE CHAIRMAN: Well, I think the desirable thing would be to tie it in with the other Section and I would rather not try to do that right now, because I'm not sure we'd get it right.

DR. BURDETTE: What we're trying to do is defeat the will of the people. We can't quite hear. You are talking about continuing the people who are appointed?

MR. BROOKS: The people who are appointed not by election, but on the third Wednesday of January --

DR. BURDETTE: You don't have appointments in the House, but we do in the Senate and the rule of the Senate is that the person take office upon election -- or the term expires when the people express their will. Otherwise, we don't have elective legislative bodies. We have appointments.

THE CHAIRMAN: I think Dr. Burdette's point is

correct, in this Section there is a gap, because we have provided here that the person elected fills the unexpired portion of the term. So, his associates in the Legislature would take office immediately, Mr. Hoff. Are you satisfied, Mr. Hoff?

MR. HOFF: Yes, sir.

THE CHAIRMAN: All right. Any further questions or comment on ten? Section 13.

DR. BARD: Section 13 had been changed as follows. If you keep your Sixth Report before you, you will note that, Each house shall appoint its own officers and determine its rules of procedure, and shall have power to compel the attendance and testimony of witnesses and the production of records and papers either before such house as a whole or before any committee thereof.

Well, we're getting here, in Section 13, to our sixth point, the Legislature must have adequate subpoena powers and the whole question of subpoena is discussed here. We were asked to insert into this particular Section a safeguard. So, because I think it's so terribly important, Mr. Chairman, may I read the whole thing?

THE CHAIRMAN: Yes. This is not a reconsideration, because at the last meeting of the Commission further action on this question was deferred pending the preparation of the memorandum dealing with the question.

DR. BARD: We believe that this rewording will take care of both the caution that the Commission had given and at the same time our feeling that the Legislature should have adequate subpoena powers and here is the rewording: Each house shall be the final judge of the qualifications and election of its members, as prescribed by the Constitution and the laws of the State. Each house shall appoint its own officers and determine its rules of procedure, which may permit its committees to meet between sittings of the General Assembly. Each house may exercise its power to compel the attendance and testimony of witnesses and the production of records and papers either before such house as a whole or before any committee thereof, provided that the General Assembly shall have by law -- and this is the part that you asked us to insert -- protected rights of witnesses, and their records and papers.

Now, I will read the last portion, but this last

portion of the Section exists apart from our strong feeling with reference to adequate powers.

Each house may punish a Member for disorderly or disrespectful behavior and with the consent of two-thirds of its Members expel a Member.

JUDGE ADKINS: Mr. Chairman, my recollection of the debate on this subject at the last Meeting was that the Commission suggested that the protection which we afforded was a protection in terms of a more than a majority vote before the subpoena power could be exercised, not only by a vote of the particular House exercising the subpoena power. I think, as I recall it, I don't have the prior Report, this language was substantial in the other Report, provided that the General Assembly shall have by law protective rights of witnesses and their papers. Wasn't that in the earlier --

DR. BARD: We didn't have it in the Sixth, but you are right, Judge, there was a substantial feeling among Commission Members that there ought to be an extra vote in this respect.

JUDGE ADKINS: But the Committee has not so provided.

DR. BARD: The Committee has not so provided because we believe that in this respect there ought to be a reconsideration of that feeling. There was no vote, but a feeling, and we went back and considered your feelings and stated it thus.

Now, if you believe that this extraordinary vote ought to be included, I might add here that our own Committee was divided with reference to whether we would go along with an extraordinary vote.

JUDGE ADKINS: May I make a motion?

THE CHAIRMAN: Just a second.

MR. MILLER: I'd like to clear a point. What we were talking about was not the right to subpoena. I think it was conceded, but it was a question of punishing for contempt, that it would require an extraordinary vote and we decided to leave that to law.

THE CHAIRMAN: I would like to state my recollection of the discussion and the action or lack of action, because I think there was only one definitive action.

There was considerable discussion over the question of whether, in the absence of any provision at all,

the Legislature had the subpoena power. Mr. Case made the emphatic statement that he thought it did. I think Senator Hoff had a question in his mind as to whether the power existed and as to whether the Legislative Council had the power.

In any event, the one definitive action that the Commission did take was to request that that point be reserved and that a memorandum be prepared on the power of the Legislature to make investigations, compel appearance of witnesses and so forth.

There was discussion as to whether anything at all should be included in the Constitution, leaving it silent and leaving the inherent power, if it existed, to issue subpoenas, whether the power should be limited to the Legislature itself, as in a grand inquest, for instance, as is presently provided in the Constitution, whether the power should be exercisable by any Committee of the Legislature at any time or whether the power should be exercisable by the Legislature or by Committees only in accordance with law and whether the power to issue subpoenas in any given case should require an extraordinary vote or, at the very

least, if a witness refused to appear, whether the power to move to punish him for contempt should be by extraordinary vote.

There was no definitive action on any of those matters. The question was referred back to the Committee to report further and with a research memorandum. Now, you each should have before you a two-page, I think, research memorandum dealing with this question.

Now, Judge Adkins, you want to make a motion?

JUDGE ADKINS: Yes. I would like to propose that the exercise of the power of subpoena by either House of the General Assembly be done only after some extraordinary vote.

MRS. BOTHE: I second it.

MR. MILLER: You mean even if the witness is willing to come or are you talking now about people who --

JUDGE ADKINS: I'm talking about the power to compel witnesses to appear and testify and produce records and the power to punish for failure to do so, both. I'm not talking about their willingness, no. I don't think, if you are willing to go and testify, as most people are,

in matters in which they have personal interest, a subpoena is required.

THE CHAIRMAN: Let me have a question or two in clarification of the motion. I take it, Judge Adkins, that your motion would not require that the Section be rephrased to meet your motion so as to prevent the Legislature from requiring the attendance of heads or persons in the Administrative Departments of the Government, as is provided for in the Executive Department draft or in the Finance Committee draft?

JUDGE ADKINS: Certainly not. I would have thought that that is covered by other provisions of this document.

THE CHAIRMAN: I would take it that implicit in your motion is the idea that specific action to authorize the issuance of the subpoena in any particular case must be taken and by extraordinary vote? In other words, you are not suggesting that the Legislature could by an extraordinary vote pass a general law applicable generally in the future?

JUDGE ADKINS: That's exactly right.

THE CHAIRMAN: Is that the understanding of the seconder,also?

MR. BOTHE: Yes.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I have a question.

THE CHAIRMAN: Let him speak as to his motion first.

JUDGE ADKINS: I don't care to labor what I consider to be the logic of the situation, because my own recollection is it was debated pretty much at the last hearing. I do feel that if this power extends such power, frankly, I don't believe the memorandum says that, I think there should be a limitation on the inherent power. I think this is different from the investigations carried on by the Houses in Congress and I think it could be an exceedingly dangerous power. It has not, to my limited knowledge, been exercised in Maryland, but I think the Legislature has on the whole been able to get such information as it needed to this point. I don't think it need be used except under extreme conditions, as I proposed.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: This is a question. Does Judge Adkins' motion mean that the Legislature by extraordinary vote can compel the attendance of witnesses before it, and only the Legislature, or does it mean the Legislature by an extraordinary vote can compel a witness to appear before one of its Committees? I don't think the motion is clear.

JUDGE ADKINS: I think the motion is not clear. I would accept the latter, if by extraordinary vote in a specific matter, the production of testimony or the production of documents could be made either before the Legislature or any House thereof or any duly constituted Committee thereof. I would concede to that extent.

THE CHAIRMAN: Mr. Bond?

MR. BOND: I would like to ask Judge Adkins does his motion not take away from the General Assembly certain powers which it has exercised under Article III, Section 24, set forth on Page 22 of the Constitution?

JUDGE ADKINS: Is that the grand inquest?

MR. BOND: No, sir, it goes beyond the grand inquest. It sets up a joint committee with a power of subpoena.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I still think what Judge Adkins has in mind is the power to compel attendance. Now, it would certainly have for any Legislative Committee, if they served a subpoena on somebody and had to have a two-thirds vote, it might be all right to require a two-thirds vote to compel attendance, but there are hundreds of cases in other places where a witness is summoned by a Legislative body and it gives him an excuse to go when, otherwise, if it's a question of his having to volunteer, he might be embarrassed or he might lose his job.

Now, I don't see any possible reason why the power to subpoena should require a two-thirds vote.

Now, to compel attendance, what I think Judge Adkins is talking about, that's an entirely different proposition and an extraordinary vote might be required; but certainly you needn't require an extraordinary vote or require a Committee to ask some official of some company to come and tell them something, but he would come, and he doesn't want to lose his job. Now,then, if the management says, You must refuse to go, then you could have your

extraordinary vote, but it seems to me to be awfully cumbersome to require an extraordinary vote to even give them the power to issue the subpoena.

JUDGE ADKINS: May I answer that?

THE CHAIRMAN: It's a question, yes. Go ahead.

JUDGE ADKINS: I don't understand that there would be anything inherently illegal in any Committee Chairman writing to John Jones and saying, We request that you appear and testify; that you certainly would not have to have a two-thirds vote on that.

MR. MILLER: Yes, but if you are working for X Company and they don't want to have anything said about it and you are requested to come, the answer is, We will deny the request. If you are subpoenaed, you have an excuse to go, unless you want to exercise some special right and then you can write back and say, I refuse to come and then you would have this procedure, but otherwise, you oughtn't to tie it up.

JUDGE ADKINS: To me, the power of subpoena is the power to enforce attendance. If that is not the meaning of the word, I would agree with Congressman Miller.

But I don't agree, unless it carries the connotation of the force, subpoena doesn't mean much.

THE CHAIRMAN: Mrs. Bothe?

MRS BOTHE: My recollection is similar to that of Judge Adkins, as to the action in the September, I believe Meeting, in which I distinctly recall, and perhaps incorrectly, that a vote was taken by the Commission upon a motion similar to that which Judge Adkins just made and was accepted by a majority of the Commission. I think this is a question of reconsideration.

MR. ADKINS: That's my recollection.

MR. SAYRE: It's a matter of accepting new language, as I understand it.

THE CHAIRMAN: I have no way to establish by the record, unless we read the transcript. We'll try to do that. My recollection is there was no vote on this question, that it was re-committed to the Committee.

MRS. BOTHE: I protest, Mr. Chairman, that without any record before the group, that a Committee, I believe, is just running away with interpretation.

THE CHAIRMAN: Mrs. Bothe, I can only answer

you by saying that when we don't have a written record of the previous meeting, we don't stop. We have to rely on the recollection of the Chairman, and if you disagree with it, we'll submit it to the Commission.

MRS. BOTHE: I propose that the matter be deferred until the action of the Commission can be established. I don't feel this is a proper proceeding.

THE CHAIRMAN: Is this a motion?

MRS. BOTHE: I don't know that a motion is in order. I'm appealing to the Chair.

THE CHAIRMAN: We can't possibly defer further action on this and then try to check the record. We won't move. We haven't got the time. We must move.

DR. BARD: Mr. Chairman, may I add that among the Committee Members themselves there was a diverse opinion as to the validity of the motion Judge Adkins has made. In this area, we did not have complete unanimity with regard to every aspect of our points. Our major point was we wanted to make certain this power was there and there would be the caution which the Commission made clear and here I think there is unanimity.

We did see a responsibility to insert in here some cautions. Now, we belive we have them. If you think we don't have them, then I think this motion is very much in order.

THE CHAIRMAN: Mr. Della?

MR. DELLA: Mr. Chairman, I think we're arguing about something that to some degree is insignificant, although it has some importance. The Legislature itself generally, when they want to have a hearing on any measure, whether it's a measure pertaining to one of the State Departments or a general measure, whatever it may be, if they feel they need witnesses to testify,they generally send a request to those people who may be vitally involved and ask them to come down. If they come down, that's good, but if they don't come down, the Legislature passes what they feel in their view is benifical legislation. I don't think they have any problem, in my 16 years fooling around with the Legislature, in getting people to come down,because the people only come down in their own personal interests or the interests of the people or company they represent.

I think the essence here is to more or less give authority to a Committee or Legislature, something which they probably have not had before as a safeguard measure in the event they may want to use the subpoena power, but to my knowledge, they have never had any problem getting witnesses before.

THE CHAIRMAN: Mr. Bond, I don't think your question has been answered.

MR. BOND: I think I can renew it in a more pointed fashion, if I may.

THE CHAIRMAN: Yes.

MR. BOND: At Page 22, Section 24 of Article III says, With a view to the more certain prevention, or correction of the abuses in the expenditures of the money of the State, the General Assembly shall create, at every session thereof, Delegates, who shall have power to send for persons, and examine them on oath, and call for Public, or Official Papers and Records.

My question is does Judge Adkins' motion do away with this power which is in the existing Constitution?

JUDGE ADKINS: I would assume that it is

substituted for that power.

THE CHAIRMAN: I would suggest to you that the power in the Constitution that you just read is not the unlimited power that the Commission is advocating. This is limited to an investigation with reference to expenditures by the State Government and not general investigative matters. So that the only power that exists in the present Constitution which gives broad investigative powers is the grand inquest. Mr. Scanlan?

MR. SCANLAN: I have another question of Judge Adkins about his motion, and that's what concerns me. We're talking about language, but I don't know what the language is exactly and where it fits in here. My question is does your motion tend to mean that if the Senate wants to authorize one of its Committees to compel testimony, the Senate by an extraordinary majority must do so, or the whole General Assembly must do so?

JUDGE ADKINS: The Senate must do so.

MR. SCANLAN: I wish we had the precise language and I wish we had where it would appear in the Section. I think I could respond or agree with it somewhat more

intelligently.

JUDGE ADKINS: In defense of that rather oblique criticism of my motion, I thought this had been referred back to the Committee for such language and that's the reason I don't have it before me.

THE CHAIRMAN: Bear with me for just a moment, please.

A transcript is here and this discussion goes over numerous pages. I'll try to state it as simply as I can. There was a motion by Mrs. Bothe that the provision be rewritten so as to require -- as I stated, the motion when put to a vote is this: The question arises on the motion that the Section be so drafted as to impose limitation on either the granted or inherent power of the Legislature to require production of witnesses and records by requiring a two-thirds vote of the appropriate House authorized to compel the attendance of a witness against his will before the Legislature or any Legislative Committee or the production of books and records. That motion lost six to 13.

There was then a motion to make the same

provision, except by a majority vote instead of a two-thirds vote. That motion was carried 13 to six.

There was then a motion to reconsider the last motion. It was adopted and the motion was reconsidered. There was then a motion to substitute for that motion a motion to refer the matter back to the Committee for further study. That was passed by acclamation.

JUDGE ADKINS: Mr. Chairman, may I now withdraw my motion and make a new one?

THE CHAIRMAN: Yes, sir, with the consent of your seconder.

MRS. BOTHE: I consent.

JUDGE ADKINS: May I propose an Amendment to Section 13, as contained in the Legislative Report of the Committee dated October 14th, which will cause the last sentence of that Section to read as follows: Each house may exercise power to compel the attendance of testimony of witnesses and the production of records and papers, and herein insert the words, Germane to legislation pending either before such House as a whole or before any Committee thereof, provided that the General Assembly shall have by law

protected rights of witnesses and their records and papers, and here is new language, provided such action shall be taken by two-thirds vote of the House exercising the power.

THE CHAIRMAN: Judge Adkins, would you be willing to submit two separate motions, divide your motion, and have the first part, Other than the two-thirds vote, in one motion and then the last phrase requiring a two-thirds vote in the second motion? I say that because I rather suspect that there are those who would favor some of the additions you make.

JUDGE ADKINS: You think I've got a better chance to get half. All right.

MRS. BOTHE: I second it.

MR. MILLER: May I ask a question? Does that say to compel rather than subpoena?

JUDGE ADKINS: It says power to compel testimony of witnesses.

THE CHAIRMAN: I couldn't take it down as quickly as you read it.

JUDGE ADKINS: I struck out the word, its, power to compel testimony of witnesses and the production of

records and papers, and here I inserted the words, Germane to legislation pending either before such House as a whole or before any Committee thereof. That would be the substance of my first Amendment.

MR. SYKES: Could I ask a question on that?

THE CHAIRMAN: The only insert, then, is the phrase, Germane to legislation pending, is that correct?

JUDGE ADKINS: I'm sorry, I was answering a question.

THE CHAIRMAN: The only issue is the question, Germane to legislation pending?

JUDGE ADKINS: Yes. Mr. Sykes seems to make an appropriate suggestion, and that is we strike out the word, exercise.

MR. SYKES: In other words, Each House may compel.

THE CHAIRMAN: All right, the motion is to amend the next to last sentence of this section by deleting the phrase, Exercise its power to, and in the third line of the sentence, after the words, Records and papers, insert the words, Germane to legislation pending.

Does the Committee Chairman want to comment?

DR. BARD: My only comment would be I think our Committee would accept this in full. I second the motion.

MR. SCANLAN: I'm not sure your entire Committee would accept it.

DR. BARD: Well, I would.

MR. SCANLAN: I want to say if we pass this, we are constitutionally curtailing the investigative power, because I think the discussions discussing the question of germaneness don't put germaneness on a more narrow basis as in this case here, if the Amendment passes. In other words, if the subject matter that the Legislature is investigating could reasonably be thought one that could give rise to legislation, I don't think any Court has ever imposed the requirement that there be pending at the time a specific piece of legislation.

Now, I know and I'm aware of the abuses of the legislative investigatory power, not only on the Federal level, but on the State level, and I'm in general sympathy with an attempt to prevent that. I think there is enough protection in the due process clause of the First

Amendment and, indeed, what the Commission has provided here, shall by law protect the rights of witnesses. If the General Assembly wants to pass a statute that defines germaneness more narrowly than is constitutionally understood, that is perfectly all right with me, but I don't think we should tie the Legislature's hands in advance in the Constitution. I don't think there is any dispute that we're doing that.

Even if you concede that the Legislature has the inherent power to investigate, and we have nothing else in there and they attempt to subpoena somebody and the fellow raises the defense there is no legislation pending, nevertheless, the Legislature has embarked on an investigation in an area that could give rise to legislation, say like in the savings and loan field, no Court would sustain that defense, but if this provision is in the Constitution, he has a better defense.

MR. CLAGETT: I remember we put in the words, exercise its power, in order that we indicate we recognize its inherent power and, by taking them out, we're reversing what we did at that time.

THE CHAIRMAN: Any further discussion? Are you ready for the question? Before you close, Judge Adkins, I would like to make this comment, as to my own position.

I am troubled by the point made by Mr. Scanlan, because I think that this power is more likely to be exercised in connection with investigations that may be desired with a view to considering whether legislation is or is not necessary rather than with pending legislation. I am thinking, for instance, of the illustration that Mr. Case gave at the last meeting with reference to the savings and loan association problems, that there is no legislation pending and yet the problem is certainly one which the Legislature should have informed itself about before passing legislation.

However, I think that there ought to be something in the Constitution making it clear that the rights of the individual to due process, fair and just treatment, or whatever phrase you may want to use,is protected and I would rather see that protected by the Courts than to try to work out any precise language that would put limits on it, because I'm afraid that the limits wouldn't give you

the protection you want.

For instance, in the memorandum on Page 2, there are a number of phrases that give some protection, none of which are quite what I had in mind. The closest is in 3, which says, The right of all persons to fair and just treatment in the course of legislative and executive investigation shall not be infringed. I would favor the addition of a phrase like that to this clause, rather than what I think is really less protection, the phrase, Germane to legislation pending.

Judge Adkins?

JUDGE ADKINS: I would simply like to say that the purpose of my proposal here is precisely to protect against what I consider to be the potential abuse that Mr. Scanlan has insisted should be the right of the Legislature. So, we have a direct confrontation on that point.

I think, under normal circumstances, the Legislature of Maryland has not engaged too frequently in investigations prior to the introduction of legislation. Normally speaking, hearings and investigations are carried out after some proposed legislation has been produced.

I think this is different than the power inherent in the Congress. I think it's much more important for the Congress to have this power, because generally speaking the powers with which they deal are much broader. They require a larger amassing of materials than I believe the matters in which Legislatures deal do. I think, without some limitation such as this, fishing expeditions would be inevitable, they could be using them for other purposes.

I don't disagree with what the Chairman says about the right of due process and I'm not against leaving it with the Courts, but I think this would be helpful.

THE CHAIRMAN: May I ask one question. I agree with your observation that the power to investigate before the legislation has not been exercised before the legislation, but has this not become an accepted exercise or function by the Legislative Council, as distinguished from the Legislative Committee?

JUDGE ADKINS: I'm not as familiar with the Legislative Council, but I'm sure it has in some instances.

THE CHAIRMAN: Ready for question? The question arises to amend the motion in the second from last sentence

in Section 13, so as to delete the words, Exercise its power, in the first line of the sentence and after the words, Records and papers, add the phrase, in the third line of the sentence, add the phrase, Germane to legislation pending. The first part of the sentence would then read, Each house may compel the attendance and testimony of witnesses and the production of records and papers germane to legislation pending either before such House as a whole or before any Committee thereof.

Are you ready for the question? All those in favor of the motion signify by a show of hands. Contrary? The motion is lost four to 12.

Judge Adkins, do you want to make another motion?

JUDGE ADKINS: I propose, sir, there be a new phrase to the same sentence which reads, following the words, Records and papers, insert a comma and state, And provided such action shall be taken by a two-thirds vote of the House exercising the power.

THE CHAIRMAN: Is there a second?

MRS. FREEDLANDER: I second it.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: I have no further comment.

THE CHAIRMAN: Mr. Scanlan.

MR. SCANLAN: I want to say at this time, it's a pleasure to agree with Judge Adkins.

JUDGE ADKINS: Thank you. Your help is welcome.

THE CHAIRMAN: Any further comments?

MRS. FREEDLANDER: Mr. Chairman, would it be in order now, since there is a word here, to use the language of lawyers, I want to know if the word, production, is a word of art, because I think of production as manufacture.

THE CHAIRMAN: With lawyers in recent years, it is indeed a word of art.

MR. FREEDLANDER: I just wondered whether it would be better to use the word, submission, because I think it means something other than production, as in creating and producing.

THE CHAIRMAN: I think it's accurate and it does have a meaning among lawyers to produce records.

I wonder if we could take a break at this time?

(There was a short recess.)

THE CHAIRMAN: The motion before you is to add a clause at the end of the sentence, And provided such action shall be taken by a two-thirds vote of the House exercising such power. Mrs. Freedlander, I think you were wanting to speak on that? Somebody over here had their hand up.

MR. BOND: I changed my mind.

MRS. FREEDLANDER: I seconded it.

THE CHAIRMAN: Any discussion? Mr. Martineau.

MR. MARTINEAU: I'd like to ask Judge Adkins, does this mean, getting back to this discussion of the difference between a subpoena and compelling, that before the Committee could issue a summons,it would have to get the approval, or are you thinking that there is some authority of distinction? Actually, I would be thinking they could issue the summons and move along without getting the approval of anybody, but it's only a question of getting an order that they will be held in comtempt if they fail to comply.

JUDGE ADKINS: I'm not sure if that question wouldn't more properly be referred to the Committee. My interpretation would be that there would be nothing to

prevent them from writing a letter or serving a document which is purported to be a subpoena or summons or notice of intent or anything you choose to call it, without getting this vote. The significance of this would mean that they could not compel or impose sanctions for failing to comply until such time as they have gone through this procedure. That would be my concept.

MR. MILLER: Could I have the language again?

JUDGE ADKINS: It's basically your language, except I have added the words, And provided such action shall be taken by two-thirds vote of the House exercising the power.

MR. MILLER: Could you put in, Prosecution for contempt hereunder, or something like that, so that it doesn't limit the power to issue ordinary, everyday subpoenas? It's only when somebody refuses --

MR. MARTINEAU: It's citing for contempt is really what you are talking about, rather than issuing an order compelling the man to appear.

MR. MILLER: It seems to me it simplifies it and you wouldn't want to have a person go because they are

requested. As we pointed out several times, there are a lot of witnesses that don't want to go and talk about their friends. If they just say, Well, he's volunteered, but a subpoena would get nine out of ten people in there. But it's the prosecution for contempt. On the Federal level, there isn't any argument about a subpoena, that before a person can be prosecuted, it requires a majority vote of the House or Senate, as the case may be, and it seems to me that's what we're driving at.

We're not trying to hamper them. We want to protect people and, if they think they have a good reason, they refuse and then it requires a vote of the body to institute punishment or a contempt decision.

THE CHAIRMAN: Judge Adkins, do you want to make any change in your language?

JUDGE ADKINS: Well, I recognize the problem, but being the author of only the concluding paragraph, I'm a little at a loss to know what to do about it. I would suggest you refer that to the Committee adopting it.

THE CHAIRMAN: Mr. Hoff?

MR. HOFF: I would think relating this only to

contempt is creating a rather awkward situation. A man may be harassed by the Legislature by what he may rightfully feel is an infringement upon his private rights or private matters and if he is told to come and fails to come, he doesn't know whether he's going to be held for contempt or not.

I think that the language proposed by Judge Adkins is more protective of the individual than having him simply wait and see whether he's going to be held in contempt by failing to appear.

THE CHAIRMAN: Any further discussion? Mr. Sykes?

MR. SYKES: I have a suggestion that Judge Adkins may consider, that might do what everybody here has been talking about, and that would be the Section would read, Each house may provide for the issuance of a subpoena for the attendance and testimony of witnesses and the production of records and papers and so on, down through the end of that sentence, and then the following sentence would be added, A witness shall not be in contempt for failure to testify or produce records unless specifically directed to do so by a two-thirds vote of the House concerned.

Would that satisfy it? That would make the distinction between the subpoena power, that is, the power to issue document and the sanction and it would also require that the sanction be imposed specifically and not generally.

JUDGE ADKINS: I'm not sure that quite satisfies my thinking in the matter, for this reason. A reputable citizen directed to produce records can be substantially harmed by the failure to produce those records simply by virtue of the publicity of having failed to comply with a subpoena of the General Assembly, even though he may not be punished for contempt. It's not alone the power to punish for contempt, but it's the power to subject to ridicule or exposure is what I'm concerned about.

It seems to me the issue of what purports to be a General Assembly subpoena, even without the power to punish for contempt, should itself be subject to some restraint.

THE CHAIRMAN: Judge Adkins, could I suggest the possibility, not language, that might meet some of the objections and also your point. To provide that either

compelling the production of documents or the attendance of a witness in a specific instance could be compelled by two-thirds vote of the House or could be done generally pursuant to a law passed by such an extraordinary vote?

What I am thinking is this would enable the Legislature, for instance, to authorize the Legislative Council to conduct certain investigations and issue subpoenas, but they would have to have a two-thirds vote or whatever the majority requisite extraordinary vote was, in order to provide generally for it.

JUDGE ADKINS: I would not agree with that, Mr. Chairman. I think the protection is the protection of requiring the General Assembly to direct John Jones to appear and testify. A direction by two-thirds vote to authorize the Legislative Council to issue subpoenas in a given area would not be the Constitutional protection that I would like to see.

THE CHAIRMAN: Any further discussion? Are you ready for the question? The question arises on the motion to amend the next to last sentence of Section 13 by adding at the end of the sentence this phrase, And provided such

action shall be taken by a two-thirds vote of the House exercising such power.

All those in favor signify by a show of hands. Contrary? The motion is carried, 11 to five.

Now, Judge Adkins, you have another motion on the same subject.

JUDGE ADKINS: I have one more and I'll quit. I would propose a new sentence be added immediately preceding the last sentence of the paragraph and following the Amendment which we have just made which reads as follows: The right of all persons to fair and just treatment in the course of Legislative and Executive investigations shall not be infringed.

MR. BOND: I second it.

THE CHAIRMAN: Is there any discussion? Mrs. Freedlander?

MRS. FREEDLANDER: Do we not already have such protection in the Declaration of Rights, as adopted?

THE CHAIRMAN: I would answer, if you have a provision in the Constitution in this paragraph conferring an express power, you would avoid -- to compel attendance

and testimony -- you would avoid any possibility as to which was paramount, by the addition of some such phrase as this. Mr. Scanlan?

MR. SCANLAN: Since the language seems to be taken from a similar provision, the Alaska Constitution, in going to our memorandum writer, I wonder if anyone is in a position to state whether that Section of the Alaska Constitution has ever been construed in any reported case, if anyone knows?

JUDGE ADKINS: I certainly do not. You are quite right, I picked it out of the memorandum.

MR. BROOKS: I can't say, but I guess probably not. It's unlikely, since it is such a new Constitution.

THE CHAIRMAN: Any further discussion? Are you ready for the question?

The question arises on the motion to add a new sentence before the last sentence of this Section reading, The right of all persons to fair and just treatment in the course of Legislative and Executive investigation shall not be infringed. All those in favor please signify by saying aye. Contrary, no. The ayes have it and it is so

ordered.

Any further motion, Judge Adkins?

JUDGE ADKINS: No further motions, Mr. Chairman.

THE CHAIRMAN: I don't know what the score is? It's perhaps three out of four. Dr. Bard?

DR. BARD: We now --

JUDGE ADKINS: You may change it at the next meeting, however.

THE CHAIRMAN: Any further questions with reference to this Section?

DR. BARD: We haven't gotten to the last sentence. We were going to deal with that separately.

MR. MARTINEAU: I have a question about the previous sentence.

MRS. FREEDLANDER: I have a question, also.

THE CHAIRMAN: All right, Mr. Martineau.

MR. MARTINEAU: I wonder about the use of the word, sitting --

MRS. FREEDLANDER: That's exactly my question.

MR. MARTINEAU: The top line --

DR. BARD: To meet between sittings.

MR. MARTINEAU: I think it should be really, sessions. I don't know that there is anything that is called a sitting at --

THE CHAIRMAN: Is there any objection to changing sitting to session?

MRS. FREEDLANDER: I have a question applicable to the same point. The rules of the House of Delegates and the Senate of the State of Maryland as they state now already state this as part of the rules, that between sessions, that between regular sessions Committees meet. I'm wondering why it's necessary to put it in the Constitution? In other words, that whole phrase, it seems to me, is unnecessary, if the rules of the House of Delegates indicate it.

THE CHAIRMAN: Dr. Bard?

DR. BARD: We did this at the behest of the Commission. If you remember, we had quite a discussion on this point and the Commission made it very clear that they felt it was necessary to do so.

MR. MILLER: The reason for that is that having changed the recommendation about continuing sessions, it

seems that it might be necessary, to permit official meetings of the Committees, it would have to be authorized here, as long as we have not provided for it.

THE CHAIRMAN: I believe there is a very, very different reason. I do not believe that Committees of the Legislature now meet between sessions except the Legislative Council and the Legislative Council is provided for by law.

This would permit each House, by its rules and not by law, to provide for sessions of its Committees.

MRS. FREEDLANDER: I thought the word,sittings, here meant in regular sessions. Between its meetings the Committees --

THE CHAIRMAN: No, I believe it's intended to mean sessions.

MR. MARTINEAU: That's why I raised the point.

MRS. FREEDLANDER: Thank you.

THE CHAIRMAN: Any further questions?

I must express some concern, as a matter of drafting here, because I think that we end up with this next to the last sentence in quite a hodgepodge and I do not think that it is merely a matter for the Style Committee.

I assume that what is intended here or at least what this sentence as drafted means to me is that notwithstanding the exercise by either House of the Legislature by a two-thirds vote of the power to compel the attendance of witnesses and the production of documents, it will be a nullity, unless the Legislature has previously passed some law, general law, providing for the protection of rights of witnesses and their records and papers.

Now, if that is the intention of the Commission, well and good. If it is not, then it seems to me that the existing language needs substantial clarification. Judge Adkins is the mover of the other motions. Let me ask you first if that was your intention? In other words, that in any given instance, even though two-thirds of either House or of both Houses seek to compel by resolution John Jones to appear before a specific Committee on a particular day, the action will be a nullity unless by law theretofore passed there is some provision for the protection of such a person appearing before such a Committee.

JUDGE ADKINS: Well, I don't understand that the protection needs to extend to the protection of the

individual summoned to be a general protective law.

THE CHAIRMAN: Oh, yes, I meant that, protection of witnesses appearing.

JUDGE ADKINS: Yes.

THE CHAIRMAN: If there is no general law, then the Legislature cannot even by two-thirds vote compel issuance of --

JUDGE ADKINS: I have not concentrated on that provision, Mr. Chairman. My offhanded opinion is there is no objection to it, but I don't feel strongly on the matter.

THE CHAIRMAN: Is there any dissent from that understanding?

MR. MILLER: You think the Constitutional guarantees wouldn't take care of that?

THE CHAIRMAN: Well, you are just asking me a question and I'm uncertain. To answer you personally, I would perhaps think it was, but that would leave it to the Courts and Judge Adkins had indicated earlier he didn't want to leave it to the Courts. My problem here is one of language. I just want to be sure that when the Committee on Style rephrases this sentence, they do not change the

meaning.

As I understand it, and if there is any dissent, I would like to have it made known, in order for there to be action to compel the attendance of a witness before either House or a Committee, two things are requisite. First, there must be a general law protecting the rights of witnesses appearing before such a Committee. Secondly, there must be a resolution compelling the attendance of that particular witness before that particular Committee passed by a two-thirds vote. Mr. Bond?

MR. BOND: Mr. Chairman, I think I do disagree when you use the phrase, Such a Committee. I think the general law would apply to all Committees of each House.

THE CHAIRMAN: I mean that.

MR. MILLER: Does the Chair think that these words absolutely mean nothing, providing the General Assembly shall have by law protective rights?

THE CHAIRMAN: I think they mean a great deal. That's my point.

MR. MILLER: What more would what you say mean?

JUDGE ADKINS: Mr. Chairman would prefer not to

have those words in, if I sense --

THE CHAIRMAN: I'm not expressing any opinion at the moment. All I'm anxious to do is to make sure that the intention of the Commission is expressed in words, and I am saying that as this is now amended and read, in order to compel the attendance of witnesses before Legislative Committees, two things are necessary, one, the Legislature must have passed and the Governor signed a law providing for the protection of all witnesses generally appearing before the Legislature or Legislative Committees. If that has been done, then you must have a two-thirds vote to compel John Jones to appear before a particular Committee.

MR. MILLER: I think that's what we voted on.

THE CHAIRMAN: All right, there is no dissent. Mr. Scanlan?

MR. SCANLAN: I was going to say that was the precise intention of the Committee in drafting that language. Of course, at the time, we did not have in the two protections that have been added today, namely, the protection raised in Judge Adkins' second motion, two-thirds vote, and secondly, the further Constitutional

protections embraced in his third motion.

THE CHAIRMAN: All right. There is no dissent and I think it's clear and Dr. Burdette and his Committee can wrestle with the problem from there on.

JUDGE ADKINS: May I just make one further comment for the record. It appears to me on a close re-reading of this that there may be some question as to whether or not the language which I proposed in the Second Amendment is clearly indicating that the vote has to be a precise vote or a vote on the precise subpoena sought for issue. I'm perfectly willing to leave that to the Committee on Style without taking further time of the Commission, but I want it perfectly clear that is the intent of the mover and also the intent of the Commission.

THE CHAIRMAN: That is the intent of the Commission, as I understood it. Now, any other comment with reference to 13?

DR. BARD: No other changes with reference to Section 13.

THE CHAIRMAN: Section 15.

DR. BARD: Now, with reference to Section 15,

Each House shall keep a public journal of its proceedings and cause the same to be published. No bill shall become a law unless it be passed in each House by a majority of the Members of that House.

I want to call your attention to the fact that in our memorandum, and this is the last point that we'd like to call to your attention, we still believe, and I'm not sure we're ready to set forth a proposal, but we still believe that we ought to call before the attention of the Convention certainly the fact that the vote for passage of the bill or resolution should be by a majority of those present, which is the current practice in Congress, and not a Constitutional majority.

THE CHAIRMAN: That would mean a reconsideration of the previous Section.

DR. BARD: I'm not ready to so move, not at this time, no. In addition to that, the change that we were asked to make is the last sentence in Section 15, On all final actions, the yea and nay votes shall be recorded in the Journal of each House. This was really a procedural change.

THE CHAIRMAN: Any comment? Any question? Mr. Miller.

MR. MILLER: Not a comment or question. I would like to make a motion that this record that we're submitting as alternate plans, that an alternate plan be filed in a sort of orative report that a simple vote of a majority present ought to be enough to enact a law. I think there's a good deal of reason for not requiring, on a lot of issues, that a majority of all the Members and --

THE CHAIRMAN: Mr. Miller, this would not require an alternate to be phrased, inasmuch as the change is simple. It's just a majority of those present instead of a majority of those elected --

MR. MILLER: Just a note made that there is a feeling of some Members.

THE CHAIRMAN: The report will certainly indicate there were pros and cons and indicate there was a substantial feeling by those present. Any further discussion on the question?

Section 16.

DR. BARD: The new Section there -- the Sixth

Draft was changed as follows: The first sentence is exactly the same. The second sentence, All impeachments shall be tried by the Senate, but no person shall be convicted without the concurrence of two-thirds of all the Senators.

Now, we were asked to add this point: Judgment shall be removal from office and may include disqualification from holding any office of public trust. This was our assignment.

THE CHAIRMAN: Could I suggest to you that you say, Upon conviction, judgment shall be?

DR. BARD: All right, good.

THE CHAIRMAN: Because judgment might be acquittal.

JUDGE ADKINS: The judgment wouldn't be removal from office, in any event. The judgment would be guilty as charged. The punishment would be removal from office.

THE CHAIRMAN: Well, I'm not so sure of that. The verdict would certainly be guilty, but in criminal practice, isn't the sentence the judgment of the Court?

MRS. BOTHE: There's a judgment and a sentence.

THE CHAIRMAN: I don't think you call it judgment

in criminal practice. You call it sentence, but it seems to me that is the judgment.

MRS. BOTHE: The judgment is guilty, the sentence is whatever --

THE CHAIRMAN: The verdict is guilty.

MR. SYKES: The verdict is guilty and the judgment is conviction and the sentence is mechanical.

THE CHAIRMAN: Can we leave that to the Committee on Style? Dr. Burdette. Any further questions as to Section 16?

MR. MARTINEAU: I guess I do have a question. And may include disqualification. Is this to be by general law or is this in each separate judgment?

THE CHAIRMAN: As phrased, it would be part of the judgment.

MR. MARTINEAU: Except if they change it to, The penalty shall be -- if they change it to, Upon conviction, the penalty shall be removal from office and may include -- that, it seems to me may be included by general law or by the specific vote upon the particular case. I would assume you mean the particular case, they could make up their minds.

DR. BARD: That's correct.

THE CHAIRMAN: Any further questions as to Section -- Mr. Hoff?

MR. HOFF: To whom does impeachment apply?

THE CHAIRMAN: Dr. Bard, do you want to answer?

DR. BARD: Mr. Brooks, because we spent a great deal of time on this and you were the one who -- would you comment on that?

MR. BROOKS: I gather the impeachment here would apply to all the public officials who are elected under the Constitution.

DR. BURDETTE: Provided by law.

MR. SYKES: This says in all cases provided by law.

MR. BROOKS: As a minimum, it would cover those elected within the Constitution.

MR. SYKES: I don't know.

THE CHAIRMAN: Well, I wonder then, in view of that question, whether there isn't perhaps muddy waters in the first clause?

MR. SYKES: What is the current language in the

Constitution?

THE CHAIRMAN: I think it just refers to officers being impeached. It doesn't, as I recall, confer the express power.

MR. SYKES: There's a big change. In Section 26 of Article 3, on Page 22, which says, The House of Delegates shall have the sole power of impeachment in all cases. Now, in the present text, we have in all cases, Provided by law, and that would indicate to me that nobody has any impeaching power in the State Government under this new provision, unless a law has been passed by the Legislature stating who is subject to impeachment, and I think the solution would be to do the same thing that the old Constitution did. There is an inherent impeachment power and impeachment is a kind of common law doctrine going way back and you can just strike out, Provided by law, and eliminate the problem. I would so move.

JUDGE ADKINS: I second that motion.

THE CHAIRMAN: Any discussion? Are you ready for the question? The question arises on the motion to strike the phrase Provided by law, at the end of the first

clause of the first sentence of Section 16. Before you vote on that, I'd like a minute, because I am somewhat concerned about the Judiciary.

I take it, Mr. Martineau, that the removal provisions in the Judiciary Article would be all encompassing? There would be no power of impeachment of a Judge?

MR. MARTINEAU: Any consideration I've ever seen of the removal power of the Supreme Court over other Members of the Judiciary is always stated as being in addition to the power of impeachment, not in substitution thereof.

MR. SYKES: That's right.

DR. BARD: The word removal is used rather than impeachment.

THE CHAIRMAN: I'm just wondering whether this would change it? I don't know that it would.

MR. SAYRE: Well, impeachment, as such, yes.

THE CHAIRMAN: The present Constitution has a different provision with reference to Judges. It says, in Section 4, of Article IV: Any Judge shall be removed from office by the Governor, on conviction in a Court of Law, of incompetency, of wilful neglect of duty, misbehavior in

office, or any other crime, or on impeachment, according to this Constitution, or the Laws of the State.

There is no counterpart in the present Judiciary Article, is there?

THE MARTINEAU: We are voting this November on the establishment of a Commission on Judicial disabilities, which would give the Legislature the power to remove and the last section of it says, This Section is alternative and cumulative, provided in Article III of this Constitution, which I gather is impeachment.

THE CHAIRMAN: My question is, there is no provision in the Article IV proposed by this Commission that is a counterpart of Section 4 of Article IV of the present Constitution, specifically providing for impeachment of Judges.

MR. MARTINEAU: That's correct.

MR. SYKES: Mr. Chairman, I would call to your attention that Section 13 of the Judiciary Article on removal of Judges simply provided for a power in the Supreme Court to remove any Judge from office, and this new -- it doesn't state any relation that that power has to any other

but the language in this Section that we're now considering on the Legislative Department, if you strike out the words, Provided by law, would be that the House of Delegates shall have the sole power of impeachment in all cases, and it would seem to me to be perfectly clear that there would be a power to impeach Judges as well as the other methods of removal provided in the Judiciary Articles.

THE CHAIRMAN: That's what I wanted to have clear somewhere, either in the Constitution or in our Report or in the record here, that it is the understanding and belief of the Commission that although this Section of Article III will remain the only specific provision of the Constitution relating to impeachment, and although there is no provision in proposed Article IV with reference to impeachment of Judges, it is not intended to remove the power of the Legislature to impeach Judges. Is there any dissent from that proposition? I take it that this Amendment would not in any way touch on that question or affect it.

MR. HOFF: I have a question. Was the answer to my question that all elected officials could be impeached?

THE CHAIRMAN: That was the answer, but I would

not say that is a complete answer.

MR. BROOKS: It was thought at the time as provided by law calls, or rather, the phrase was added because of the removal of a number of prior elected officials from the Constitution, that it might be desirable and some allowance might want to be made for the impeachment of some of the appointed officials or officials chosen in manners other than by General Election.

MR. HOFF: Well, I'm curious to know how far this power of impeachment does go? I'm not familiar with it.

THE CHAIRMAN: Well, I am not sure myself, and your question is the one that is in my mind, I assume, and that is, does the power of impeachment extend beyond elective officers. I don't think we can answer that. I believe it does, but --

MR. MILLER: It does repeatedly on the Federal level.

THE CHAIRMAN: I think that's a question that we will have to research further and I should think the answer would be fairly clear, if we can get it. Dr. Bard?

DR. BARD: Mr. Chairman, in light of the

discussion, then, what do we gain by eliminating, Provided by law, Mr. Sykes?

MR. SYKES: If the Legislature failed to provide for impeachment or if it failed to pass a law or if it passed a law that said that everybody but certain favorite people can be impeached, then there would be no power to impeach certain officials who ought to be.

If you are interested in a -- well, I won't say that, but I think that it removes a limitation which ought not to exist.

DR. BARD: I'd like to have other Members of the Legislative Committee comment on this point, but it was our feeling that, Provided by law, would actually strengthen this particular Section and clarify -- the mere fact that we ourselves are not clear -- and place the power within the hands of the General Assembly to so provide. Am I right about that, Mr. Scanlan?

MR. SCANLAN: I don't recall participating in that aspect, Harry. I was going to say that I agree with Mel, unless we delete that phrase, the new Legislature under a new Constitution would have the power to say who

can be impeached and who cannot be impeached and, if they don't do anything, there would be no power of impeachment.

THE CHAIRMAN: That's the real danger in it, that unless they covered every possible office, the power would disappear, but I must confess that I think even the deletion of the phrase is not the complete answer to the problem, unless we are sure that the power of impeachment exists as to all officers, either pointed or elected. Mr. Martineau?

MR. MARTINEAU: I just might suggest that the Federal Constitution specifically says it applies to all Civil officers of the United States, and we might want to do the same thing.

DR. BARD: That would be clearer than leaving it out entirely, it seems to me.

MR. SYKES: What Section?

MR. MARTINEAU: Article II, Section 4, on Page 121.

MR. BROOKS: The problem is that even so, with our Civil Service types of arrangements and conglomeration of positions, you still have the question of what are the

officers.

MR. MARTINEAU: That's right. I think that would be open to Judicial interpretation. It would have to be.

MR. BROOKS: Would it clear it by leaving it or adding it? It doesn't say where the line is any more than if we didn't have the line.

MR. MARTINEAU: But if you don't have something in here, it may be an empty power.

MR. MILLER: Would adding all Civil officers -- shall have the power of impeachment of all Civil officers, would that clarify it?

MR. SYKES: What about the Adjutant General?

MR. MINDEL: The model Constitution provides that the Legislature may impeach the Governor, heads of principal departments, judicial officers and such other other officers of the State as may be made subject to impeachment by law.

MR. HOFF: Officers of the State would prohibit the impeachment going down into local officers.

THE CHAIRMAN: I'm wondering whether -- as much as I hate to defer anything, I'm wondering whether this is

a matter that the Committee should consider more carefully and come back with a report as the second special order of business on next Monday?

MR. SYKES: I will withdraw my motion, but I would request that the first order of business of the Committee in considering this is the First Draft of the memorandum on the impeachment power and I hope on the impeachment power, as distinguished from the Legislative provision, it gets a memorandum.

DR. BARD: It is a problem. If you can help us any by taking a day off, that will be deeply appreciated.

THE CHAIRMAN: The motion is withdrawn and, in the absence of objection, the Section will be re-committed to the Committee to report back at the next meeting of the Commission.

DR. BARD: Section 17 had but three words added at the request of the Commission and those are the words on Page 6, in final form. Except during the first two days of a special session, no final vote for passage of a bill shall be taken until the bill shall have been printed in final form.

The Commission asked us to insert those words just to protect it; and until the third calendar day after introduction.

Now, I have an important item here, a final statement.

THE CHAIRMAN: I had a note with reference to Section 13 that I omitted to call to your attention, if you will go back there a moment. The first line says, Each House shall be the final judge. I wonder what is added by the word, final,and I wonder if it isn't a trouble maker, because it connotes that someone else is also preliminarily a judge? Would there be any objection to deleting the word, final, in the first line of Section 13?

DR. BURDETTE: Why not sole, instead of final?

THE CHAIRMAN: Why not just, Shall be the judge?

MR. SYKES: Mr. Chairman, I think you might want to eliminate any problems, as to whether or not there is judicial review. In fact, even the word, final, in connection with administrative agencies does not eliminate judicial review, but I think there is more of a chance, in light of the general interpretation of Constitutional

provisions for Legislatures which use similar language, that the Courts will keep hands off in this area and I would be afraid that if you left out the usual language, somebody might seize on this as a pretext for saying we intended to weaken the independence of --

THE CHAIRMAN: I don't know that the word, final, is the usual language. I think the usual language, that I'm familiar with, is that each House shall be the judge of the qualifications of its own Members, and I would think if you said that you would leave untouched the question of whether there could or could not be judicial review.

MR. SYKES: The Federal Constitution, in Section 5 of Article I, says it shall be the judge.

MR. MILLER: Didn't the Federal Courts take over in connection with one of those recent Alabama elections?

MR. SCANLAN: No, they didn't. That's the point now before the Supreme Court.

THE CHAIRMAN: The same language in Section 19 of Article III. Do you have any further question, Mr. Sykes?

MR. SYKES: I don't think the emphasis, even

with the word, final, is misplaced. It's in here. I make no motions. I'm not unhappy with it.

THE CHAIRMAN: What I was saying was in the absence of objection, we would delete the word. Do you object to deleting it?

MR. SYKES: If it is understood definitely that there is no intention of a change and that this would carry over whatever the meaning of the present Constitional provision is, I have no strong feeling on it.

DR. BARD: Final is not in the present.

DR. BURDETTE: It almost seems to me it would be better not to use the word, final.

THE CHAIRMAN: That was my point.

DR. BURDETTE: It implies that there could be a preliminary one. We had a case in Montgomery County in which the Courts, in dealing with eligibility --

THE CHAIRMAN: Then the word, final, is deleted. Now, Dr. Bard, you had another matter.

DR.BARD: We have one final matter, and this is our great point of debate, confrontation, discussion, and we have been delaying a decision with reference to our

recommendation vis-a-vis bicameralism or unicameralism.

From the beginning, you will remember that our Committee was almost split evenly down the middle and this Commission itself had no strong recommendation to us when we asked for a poll of interest.

We are now giving our recommendation as noted on Page 6. By a majority of one vote, the Committee recommends to the Commission the adoption of a bicameral Legislature. The majority recognizes that the case for unicameralism is almost as strong, but believes that Maryland should retain its bicameral Legislature. We did not take time on this occasion to review the arguments on both sides again because we've done so on so many other occasions.

I would like to add, though, that some of us felt that now that the progress report or the preparatory report was beginning to unfold, that the nature of the preparatory report itself, and I'm going to add here that this is not the view necessarily of the entire Committee, that the nature of the preparatory report itself was such that a recommendation in terms of bicameralism would be

more in keeping with the nature of the way the territorial report was unfolding.

On the other hand, we would like to make it clear that we are submitting a second text, which you have in your hands, so that it would be -- and which we're calling Continuation of the Seventh Report of the Committee on Legislative Department, so that it would be easy enough for the Convention itself to adopt unicameralism, if it so desired.

In a sense, then, our report submits two recommendations and we feel very strongly that earlier papers that we have submitted in our deliberations should be forwarded to the Convention as a whole, so that they might be prepared to have the arguments in terms of both sides.

MR. SYKES: It is nigh onto noon this Sunday, and I venture to suggest that whatever vote we take here today, with some eight or more Members of the Commission absent, that vote on this delicate question is going to be surely reconsidered at some meeting of the Commission which has a greater number of Members present, and I would suggest that this question be made the third special order of

business for an hour on a day when there most likely would be full representation of the Commission Membership and we should not try to resolve it now.

THE CHAIRMAN: I would like to suggest amending that to the extent of saying at the next meeting.

MR. SYKES: Very well. That's what I meant.

THE CHAIRMAN: Dr. Bard?

DR. BARD: I would agree with that, except that I believe we ought to make note at this time of the recommendation of the Committee because, unless we do, we'll be going all the way back and moving in circles again. So that it seems to me that if we do make note of our recommentation, which at this point is a recommendation in favor or bicameralism, we would then have something to hinge our debate onto.

This is all we're saying. I'm not asking now that the Commission as a whole vote on the recommendation. I am asking that you call attention to it, and finally, I would like to have John say just a word or two about this exhibit which was handed out within the last two or three minutes.

MR. MARTINEAU: Could I ask a question before we get off the recommendation of the Committee? I would just like to get the Committee Members on both sides, the names. I want a poll.

DR. BARD: At this time we don't feel it is important to indicate nor even germane to indicate --

MR. MARTINEAU: I feel it is.

DR. BARD -- the individuals who felt one way or another. There will be opportunity for every Member of the Committee, as for Members of the Commission, to marshall their opinions and to make them known on this day of reckoning which we have set forth.

THE CHAIRMAN: Let Mr. Brooks explain this memorandum, so that you can consider it.

MR. BROOKS: This is something for you, that you might want to look over before the next meeting. This is only a part of an analysis that is being prepared on the last session of the Legislature for which there are complete records at this point, and that's the session before last, 1965.

There is no key on this particular page, so I

will briefly indicate what this information is about.

First of all, this is being prepared in response to the several inquiries we have had concerning the extent of review one body gives to the legislation of the other. The first thing we've used, and we used this information many times in the Political Subcommittee, is how much legislation is local in nature and how much is State. Now, all of these recommendations, insofar as you can make a statistical analysis, is as much judgment. You will note, under House and Senate bills, the first item is just a recognition of how many of the bills are really local in character, as apart from those dealing with Statewise issues. As you can see, in the House, 39.4, and in the Senate 46.3.

Now, the first column is the number of total bills considered in the House and Senate. Now, the first, under both State and local, I'll deal with just the House, because the same key is applicable to both, died in Committee is not literally that. It's died in Committee or on the Floor. Died in the Senate means either died in the Committee or died on the Floor. Review Index Zero indicates that the body, in this case, looking at the House, that the House

passed 183 bills carried to them from the Senate without any alteration at all. Review Index One indicates that only a grammatical change of some kind or other has been made in the bills enacted that have been sent to the House from the Senate. Review Index Two indicates minor substantive change. Review Index Three indicates some major overhaul, a real significant policy alteration in the legislation as it arrived from the Senate, and Conference Committees have those bills referred out to Conference.

There is one problem, there's an immediate discrepancy between Three and Four. There should be the same number in the Senate and Committee, but one got lost somewhere. There is one other thing that should be called to your attention that could be a significant factor that is not reflected here, which is the question of how many of the bills were precisely the same at the time they were introduced in the House and the Senate and that will be taken into account at a later time, but at this point we don't have sufficient statistics to indicate that on this particular analysis.

THE CHAIRMAN: All right, now, without putting

the last suggestion to a vote, we will exercise the privilege of the Staff and say that the matter of the decision of the Commission, whether it recommends unicameral or bicameral, will be on the agenda at an early portion of the next meeting, which is Monday a week, Monday, the 24th.

Let me remind you that the Commission has heretofore decided that it will include as alternate recommendations provisions for both a bicameral and unicameral Legislature. The Committee has drafted and you have with you in your report a complete draft of the Legislative Articles pertaining to unicameral Legislatures. This would not be a complete listing of all changes which would be necessary throughout the Constitution, which we recommend with the unicameral Legislature. Other Articles and other information would be necessary.

However, it is important for you to read over and understand the provisions of this Article with reference to a unicameral Legislature, for two reasons. One, so that you can see in terms of actual language how it would operate and, secondly, so that we can move quickly when we consider that language, because regardless of which of the

two alternates we recommend, we will be recommending language for each.

I was very anxious to have at least some opportunity for the Committee on Political Subdivisions, but we're within two minutes of the hour of adjournment and I have tried to adhere to the promises made as to the final adjournment and,therefore, we will not be able to hear from that Committee.

It will be necessary for us to meet,I think, the full two days of the next session, the 24th and 25th. The meeting will probably be at the Brown Estate. We will advise you promptly about that and also advise you on how to get there and the recommendations and so forth.

Let me say that I think it is vital, that if it's humanly possible, these next two sessions be attended by every Member of the Commission. We must finish the draft and get on with the work of our report. I think we've made a tremendous amount of progress in these past three days, but there is still a tremendous amount to do and we can get it done and do it properly if everyone can be present, and I realize that this is a real sacrifice. I

would hesitate to be as stringent about it as I am, if it were not for the fact that the task is tremendously important and we cannot do it with part of the Commission. We need the help of every Member.

Is there anything anyone else desires to bring up? May I ask just one other thing, before you leave, of every Committee Chairman. I have a little hesitancy in asking this, but not too much, really, because I have no alternative. Will each Chairman ask his reporter to go over the changes in the portions of the Constitution for which the Committee is responsible and which have been agreed upon finally and endeavor to let me have a draft, a completely revised draft of what he understands to be completely revised, except as to sections still under study, by Tuesday. This would mean that each reporter, this is a mechanical task, really, it means each reporter will have to do it tomorrow or tomorrow evening. I don't care how scratched up it is, but I think it's imperative that we be able to submit to you in advance of the next meeting a picture of the whole Constitution to the extent that we have moved today.

MR. CLAGETT: On that point, Mr. Chairman, can we put it over until Wednesday morning, so our Committee can meet Tuesday night?

THE CHAIRMAN: We'll give a special dispensation to your Committee, but to none of the others.

MR. CLAGETT: It's a very poor salve, but I'll accept it.

MR. SAYRE: At this point, Mr. Chairman, I don't see how I can be there. Is it possible now to present a vote in favor of unicameralism?

THE CHAIRMAN: I would hesitate to do this because we have decided that a person not present should not be entitled to vote.

MR. SCANLAN: Mr. Chairman, even though Mr. Sayre's vote is not the same as mine, I move for an exception. We have discussed bicameralism versus cameralism,

If he isn't qualified to cast a vote now, I don't know when he'll ever be.

THE CHAIRMAN: My point is the same privilege would have to be extended to every other absent Member of the Commission and I would fear that there would be a request

that the same privilege be extended to vote on other matters. I think it's rough that we have to do this, but I really feel that it would be most unwise to provide at this late date for absentee voting. You never know what comes up in debate.

MR. MARTINEAU: Mr. Chairman, may I suggest that if you don't permit them to vote, that I think the record ought to indicate the feelings of those people who are absent?

THE CHAIRMAN: No difficulty about doing this at all.

MR. BOND: May I suggest that the convening time not be set at 9 o'clock next Monday morning?

THE CHAIRMAN: Would 8:30 be better?

MR. BOND: I just suspect it's going to be pretty hard for everybody to get there by 9.

THE CHAIRMAN: It's up around Elkton. We'll have to find out how far it is for the furthest Member and work a convenient time. We'll try to work it so no one has to arise earlier than 5 a.m. that morning.

(The Meeting adjourned at 12 noon.)

UNIV. OF MD COLLEGE PARK
3 1430 03339894 4

THE BOUND TO PLEASE
Heckman Bindery INC.
MAY 67
N MANCHESTER
INDIANA